

In The Matter Of:
United States vs.
PFC Bradley E. Manning

Vol. 20
July 19, 2013
UNOFFICIAL DRAFT - 7/19/13 Morning Session

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VOLUME XX

IN THE UNITED STATES ARMY

UNITED STATES

VS.

MANNING, Bradley E., PFC COURT-MARTIAL

U.S. Army, xxx-xx-9504

Headquarters and Headquarters Company,

U.S. Army Garrison,

Joint Base Myer-Henderson Hall,

Fort Myer, VA 22211

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The Hearing in the above-titled matter was

held on Friday, July 19, 2013, at 9:30 a.m., at

Fort Meade, Maryland, before the Honorable Colonel

Denise Lind, Judge.

DISCLAIMER

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1 **APPEARANCES:**

2
3 **ON BEHALF OF GOVERNMENT:**

4 **MAJOR ASHDEN FEIN**

5 **CAPTAIN JOSEPH MORROW**

6 **CAPTAIN ANGEL OVERGAARD**

7 **CAPTAIN HUNTER WHYTE**

8 **CAPTAIN ALEXANDER von ELTEN**

9
10 **ON BEHALF OF ACCUSED:**

11 **DAVID COOMBS**

12 **CAPTAIN JOSHUA TOOMAN**

13 **MAJOR THOMAS HURLEY**

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1 PROCEEDINGS,

2 (Inaudible. Announcements in media room.)

3 THE COURT: Have there been any additional
4 exhibits added to the record?

5 MR. FEIN: Yes, ma'am. What's been marked
6 Appellate Exhibit 611, Request for Special Finding
7 Article 51 Delta RCM918 Bravo.

8 THE COURT: Defense, as I read that request
9 that's basically for special findings for everything.

10 Before we continue, I, I notice Captain von
11 Elten is not here.

12 Going back to the 641 arguments we had
13 yesterday.

14 I, I did have a question on the
15 Government's position with respect to the defense
16 assertion that the -- not the entire database was
17 stolen or knowingly converted only part of it was.

18 What's the government's position with
19 respect to the charges?

20 MR. FEIN: Ma'am, is the court asking for
21 all of the 641 defenses or any specific database.

1 THE COURT: I believe CIDNE-I, A and
2 everything except SOUTHCOM, I believe.

3 MR. COOMBS: Yes. As far as the SOUTHCOM
4 database is the only one that didn't change at any
5 point in time. The CIDNE-I and A had tables, SIGACTS
6 table.

7 THE COURT: What about NCD?

8 MR. COOMBS: It changed over time as far as
9 every day additional things coming in but it only had
10 cables.

11 THE COURT: Really we're talking about
12 CIDNE A and I.

13 MR. COOMBS: Right, Your Honor.

14 THE COURT: That's what I'm looking at.
15 You've charged the databases with such-and-such records
16 and the evidence as the defense suggested came out
17 that's only part of the CIDNE-A and I databases.

18 MR. FEIN: First, ma'am, the evidence
19 doesn't have that it's a separate table within it --

20 THE COURT: Excuse me?

21 MR. FEIN: The actual evidence presented

1 before the court isn't there is a database with
2 multiple tables and the multiple tables there are some
3 tables that include counter-IED or HUMINT reports.

4 When you access the CIDNE web page and you
5 go on there are different types of reports to pull,
6 just to clarify the evidence presented by both parties.

7 As far as the court's question on
8 government's position for CIDNE-A and I whether if it
9 was a lesser amount, I guess --

10 THE COURT: What I'm looking at is the
11 government's position.

12 Defense, as I understand it, correct me if
13 I'm wrong, has asserted CIDNE I is a database. The
14 SIGACTS are a subset of that database and there's
15 things besides the SIGACTS there.

16 MR. COOMBS: That's correct, Your Honor,
17 that is the testimony. That has been enlisted by
18 multiple witnesses during the government's case issue.

19 THE COURT: Does the government dispute
20 that?

21 MR. FEIN: The government disputes, Your

1 Honor, that the government's evidence that's been
2 presented has been the portion of the CIDNE database,
3 the portion of CIDNE that was pulled, CIDNE database
4 was the SigActs.

5 There's other types of reports that existed
6 on CIDNE, whether they're part of the same database or
7 not. There hasn't been evidence to say that. It's a
8 very technical difference there hadn't been. There has
9 been evidence and the government concedes this that
10 there's other information that existed through CIDNE.
11 That's what the counter-IED, HUMINT reporting was.

12 Whether it's part of the same database,
13 there has not been any testimony to that. There has
14 been testimony the database containing the SIGACTS is
15 what was compromised on a certain date and time.
16 That's in Mr. Holifield's stipulation of fact. The
17 exact date and time, the snapshot in time which I
18 thought the court's original question was a snapshot in
19 time he took all the SIGACTS.

20 THE COURT: CIDNE-I.

21 MR. FEIN: Yes, ma'am.

1 THE COURT: That's a database.

2 MR. FEIN: Yes, ma'am.

3 THE COURT: What is contained in CIDNE-I,
4 is it just SIGACTS or SIGACTS and something else?

5 MR. FEIN: May I have a moment?

6 THE COURT: Yes.

7 MR. COOMBS: Ma'am, as a officer of the
8 court I will represent it's multiple tables other than
9 SIGACTS. I would expect the government counsel to
10 represent the same.

11 THE COURT: Is that based on the evidence
12 that's been presented?

13 MR. COOMBS: Yes, Your Honor. It's easily
14 identifiable and it is based upon the evidence.

15 Witnesses, I asked several witnesses during
16 the government's case in chief, what else was contained
17 in CIDNE-I, HUMINT reports, intel reports, PSYOP
18 reports, terrain reports, you had social economic
19 reports.

20 All these reports, I brought that out
21 during the government's case in chief to show that he

1 had a full range of all this stuff and HUMINT reports
2 were much more sensitive and he wanted to -- he could
3 have pulled those and he didn't. And that was stuff
4 that was pulled through the testimony of the witnesses.

5 Again, I would think as an officer of the
6 court, Major Fein would immediately concede that yes,
7 to your question so the court knows yes, there are
8 multiple tables, SIGACTS is one of the many tables in
9 the CIDNE-I and A database.

10 MR. FEIN: Ma'am, I, the United States is
11 not contesting whether witnesses testified there's
12 other information.

13 Mr. Coombs is purposefully using the term
14 tables. No one has done that. That's why I explained
15 to the court there has been testimony there's other
16 information there.

17 As I'm looking right now, I'm looking at
18 what the exact testimony was, Your Honor. There is
19 other information within CIDNE. How it's formatted,
20 how it's technically in there, the government does not
21 know that.

1 When a user does go to CIDNE there's other
2 options they can chose from the web page and that is
3 the testimony we heard. The option could be to pull
4 SigActs, to pull counter-IED and HUMINT reporting.
5 Whether it's a table in the same database or not there
6 is no evidence of that. It is when a user goes to
7 CIDNE they make a selection.

8 THE COURT: Is there more than CIDNE in the
9 database or not?

10 MR. FEIN: Ma'am, there is more than
11 SIGACTS within the CIDNE database, yes.

12 Now, whether it is tables or not, the
13 government doesn't know. There has been no evidence to
14 that. I know it's a very fine technical argument but
15 I'm trying to relate exactly what has been presented.

16 THE COURT: Okay. What I want to know is
17 the government's position. There's charges under 641
18 all allege stole a database consisting of such-and-such
19 records.

20 MR. FEIN: Yes, ma'am.

21 THE COURT: If there are more things in the

1 database than the SIGACTS, what's the government's
2 position with respect to those specifications?

3 MR. FEIN: Yes, ma'am, lesser included. It
4 is less than the total of what is available. Which is
5 why the specification is read in the database
6 containing a certain number of records and that's not a
7 precise number either.

8 THE COURT: So parts of the database.

9 MR. FEIN: It is part of the database, Your
10 Honor, and --

11 THE COURT: So is the government -- should
12 the court in 917 findings make changes to the
13 specifications to say part of the database?

14 MR. FEIN: Well, ma'am, the United States
15 argue that it is within the trier of facts' purview to
16 come back with a finding of exception for substitution.

17 THE COURT: I've got 917 motions before me.
18 Have you presented evidence that the entire database
19 has been stolen?

20 MR. FEIN: For the CIDNE database, the
21 United States has not if that is what, if that

1 information is considered within the database although
2 there is, again, there is no evidence that has said
3 that it's in the database, the CIDNE database.

4 THE COURT: There's no evidence of what?
5 That's where I'm getting confused. I'll go through the
6 record and I believe that what the defense is saying
7 from my recollection is correct that the witnesses said
8 there's more than the SIGACTS in the database.

9 MR. FEIN: Well, ma'am --

10 THE COURT: Were you saying there are
11 fields in the database you can pull out of the fields
12 in the SIGACTS and you can pull them in some other
13 form?

14 MR. FEIN: Ma'am, what I'm trying to do is
15 not answer any questions with evidence that has been
16 presented. That would be my answer. A user can go to
17 CIDNE, I've done it myself and gone onto CIDNE and made
18 selections from there. There's no evidence for the
19 court whether the CIDNE database organically has the
20 information stored within it or not, the other
21 information. All the users have testified that they

1 could pull certain types of information including
2 SIGACTS and other information. That's what's been
3 before the court.

4 THE COURT: If there's other information in
5 the database that wasn't stolen or purloined or
6 knowingly converted and I've got a 917 motion. How do
7 I -- I mean, what's government's position? The entire
8 database then hasn't been stolen?

9 MR. FEIN: Ma'am, then if that is, which
10 appears to be the defense's argument and if that's
11 their argument for 917 purposes, it would be then the
12 government has presented evidence to a lesser excluded
13 which is something less than the entire database.

14 THE COURT: So is the government then
15 conceding that there's something more than SIGACTS in
16 the CIDNE-I and A databases, based on the evidence?

17 I threw that question at you, I understand
18 that. If you want to wait until the next recess to
19 answer it that's fine.

20 MR. FEIN: We'll review the evidence and
21 get back to the court on whether the actual CIDNE

1 database had more or not, based off the evidence
2 presented by both sides.

3 THE COURT: That's fine. I threw this at
4 you as a surprise, I understand that. But I would like
5 an answer to the question.

6 MR. FEIN: It's only for CIDNE, correct,
7 ma'am.

8 THE COURT: I believe that's all you
9 allege, right?

10 MR. COOMBS: Right, CIDNE-I and CIDNE-A
11 database, yes. Multiple witnesses said other
12 information was in the CIDNE-I and A database.

13 THE COURT: It would be helpful to me which
14 witnesses said that.

15 MR. COOMBS: Any HUMINT witness I covered
16 it with, ma'am, but I can go through that.

17 THE COURT: Is there anything else we need
18 to address before we proceed?

19 MR. COOMBS: Yes, ma'am. In the 802
20 session the defense renewed its objection to the next
21 witness' testimony and I'd like to put it on the

1 record.

2 Under RCM905F the defense requests that you
3 reconsider your determination that Ms. Showman's
4 statements are proper rebuttal.

5 First, the government has offered
6 Ms. Showman as rebuttal to Ms. McNamara's testimony.
7 Ms. McNamara testified about the fact that PFC Manning
8 exhibited concern and care for human life. He was a
9 humanist. So that was the testimony that we received.

10 Ms. Showman is going to testify to
11 statements that she alleges my client made only to her,
12 no one else.

13 Those statements do not rebut whether or
14 not PFC Manning is a humanist. They do not rebut
15 whether or not PFC Manning has care for human life. So
16 for that instance we don't believe it's proper
17 rebuttal.

18 Secondly, the government chose not to
19 elicit this testimony in its case in chief. And they
20 certainly could have done that when Ms. Showman was
21 called. United States versus Murphy 33MG33234. We

1 request the court determine this is evidence that
2 should have been offered in the government's case in
3 chief and because they didn't do that this court should
4 exclude it.

5 Additionally, just looking at the
6 statements, we had made a previous filing under 404B
7 indicating that these statements were not proper 404B
8 and that they were not the reliability of the
9 statement, the fact that the statement was actually
10 made couldn't be determined based upon the source of
11 who this was coming from, Ms. Showman.

12 And the fact that these statements, at
13 least any documentary form of the statements, did not
14 get reduced to writing until after my client's arrest.

15 And the defense's position is that is
16 evidence of the fact that these statements were made up
17 by Ms. Showman in order to make my client look bad.

18 So for those reasons we request that the
19 court under RCM905F reconsider both the rebuttal and
20 the 44B ruling and determine that Ms. Showman is not
21 relevant.

1 THE COURT: All right. Thank you.

2 Government?

3 MS. OVERGAARD: Yes, ma'am. Before
4 Ms. McNamara testified, the government did object to
5 that testimony and the defense specifically stated they
6 were offering it for motive and plan of the accused.
7 We did object too based on the time period. And that
8 time period is the same time period in which the
9 statement was made to Ms. Showman. So the statement
10 does, it directly rebutted what Ms. McNamara said.

11 The government chose not to elicit this
12 testimony during its case in chief partially due to,
13 well, totally do to, in fact, Appellate Exhibit 470
14 which was the court's ruling that if we, that mode of
15 evidence was relevant to the limited portion of
16 knowledge for the Article 104 charge but if the
17 government opened the door with Ms. Showman then all of
18 the accused state of mind would be able to come in as
19 evidence. So the government chose not to elicit that
20 in the case in chief.

21 After the defense elicited testimony

1 directly contrary to what Ms. Showman will testify what
2 the accused motive or implied motive was, the
3 government is choosing now to call her back in rebuttal
4 now.

5 MR. COOMBS: Ma'am, the government keeps
6 using the word motive. We never used the word motive
7 with Ms. McNamara. We used state of mind 8033. Then
8 existing state of mind. The court clarified you are
9 eliciting then existing state of mind from your client.

10 Yes, everything she testified to was that
11 he was a humanist, that he cared about human life, that
12 he was studying and reading in order to better prepare
13 so he could provide better information to his
14 commanders so hopefully he could save lives and he was
15 concerned about the lives of soldiers, Marines,
16 civilian contractors and local nationals.

17 And so in that regard Ms. McNamara did not
18 testify to any motive. The government is using that
19 word now to say we should be able to bring motive in
20 but we never offered Ms. McNamara as motive evidence.

21 MS. OVERGAARD: We can review the record.

1 The government raised it was for plan of motive. The
2 state of mind of the accused or the motive. We could
3 call testimony for the state of mind. It was to rebut
4 the accused state of mind at the exact time
5 Ms. McNamara testified to his state of mind.

6 THE COURT: Well, the state of mind is
7 relevant to the motive basically. The court finds it
8 is proper rebuttal. It's not sandbagging. It's, under
9 Murphy, the court is going to adhere to the original
10 ruling on 404B, the reliability of the witnesses is a
11 weight question that goes to the fact finder. Go ahead
12 and call.

13 MS. OVERGAARD: United States recalls
14 Ms. Jihrleah Showman.
15 Whereupon,

16 JIHRLEAH SHOWMAN,
17 called as a witness, having been first duly sworn to
18 tell the truth, the whole truth, and nothing but the
19 truth, was examined and testified as follows:

20 REDIRECT EXAMINATION BY MS. OVERGAARD:

21 Q I just want to remind you you're still

1 under oath.

2 A Yes.

3 Q Ms. Showman, when you last testified, when
4 did you say you arrived at Ft. Drum?

5 A I arrived approximately March of 2009.

6 Q And what was your relationship with the
7 accused when you were in Garrison before you deployed?

8 A I was his team leader.

9 Q When was that approximately?

10 A I became the 35 Foxtrot team leader as well
11 as Manning's at around the first part of April 2009.

12 Q In this capacity did you interact with PFC
13 Manning daily?

14 A Yes.

15 Q Did you discuss personal topics?

16 A There were personal topics discussed, yes.

17 Q You drove him different places?

18 A Correct.

19 Q In that position were you also responsible
20 for counseling PFC Manning?

21 A Yes.

1 Q In general, why did you counsel him?

2 A Mainly just to keep him informed and see
3 where he was personally as well as professionally. Any
4 improvements that needed to be made or any good things
5 that needed to be documented.

6 Q How often did you counsel him?

7 A Once a month unless more counseling needed,
8 event oriented counseling needed to be conducted.

9 Q What is event oriented counseling?

10 A If there was a specific event that indicate
11 possible corrective action or an incident that would
12 need documentation. It's kind of a sitdown with him to
13 discuss the things that needed to be improved upon,
14 what actually happened and where we go from there.

15 Q During these counselings, did you ever ask
16 PFC Manning his motivation for joining the military?

17 A Yes.

18 Q Do you remember when that was?

19 A That was approximately August timeframe.

20 Q How do you remember that date?

21 A It was after the JRTC rotation that the

1 shop went attended.

2 Q When was it in regard to your deployment?

3 A It was before deployment. We deployed in
4 October of that year so it was a couple months before.

5 Q Do you remember what the accused's response
6 was when you asked him that question?

7 A He indicated that he joined the military
8 mainly for training and educational benefits.

9 Q And did you prompt him to elaborate on
10 that?

11 A Yes, I did.

12 Q What did do you?

13 A I asked him, due to the fact that it was
14 kind of an answer that every soldier gives, I wanted
15 something a little bit more in-depth so I tapped the
16 flag on my shoulder and I asked him what the flag meant
17 to him.

18 Q And what was his response?

19 A He said the flag meant nothing to him. And
20 he did not consider himself part of -- did not consider
21 himself to have allegiance to this country or any

1 people.

2 MS. OVERGAARD: Thank you.

3 CROSS EXAMINATION BY MR. COOMBS:

4 Q I want to start off by asking you a few
5 questions about what you just testified to, okay,
6 Ms. Showman?

7 A Yes, sir.

8 Q No one was at this conversation besides you
9 and PFC Manning; is that correct?

10 A Correct.

11 Q And this was a verbal counseling session
12 between you and PFC Manning?

13 A Correct.

14 Q And you asked him, you testified on direct,
15 you asked him why you joined the Army?

16 A Yes.

17 Q And, in fact, he told you that he joined
18 the Army because he needed money for college?

19 A Correct.

20 Q He also told you he joined the Army so he
21 could learn more about computers?

1 A Yes.

2 Q And during that conversation you apparently
3 interpreted his body language as not really caring
4 about the counseling session?

5 A He had his typical stance, just kind of
6 putting up with the conversation.

7 Q My question to you was, during that
8 conversation, you interpreted his body language as not
9 really caring about the counseling?

10 A I can't confirm that or deny that.

11 Q So you have no opinions as to how you
12 interpreted his body language?

13 A It appeared as though -- he didn't seem
14 distraught by the counseling session or the fact that
15 he was bothered with it --

16 Q Listen to my question. Could you see from
17 his body language whether or not in your opinion he was
18 not caring about the counseling session?

19 A I did not see him actually. Not at that
20 point.

21 Q Based upon his body language, you were not

1 happy?

2 A I was not, I was not unhappy at that time.

3 Q Well, that's why you tapped your shoulder,
4 correct, the flag, what does that mean?

5 A No, that's incorrect, sir.

6 Q You didn't tap your shoulder because you
7 were upset?

8 A No, I did not tap my shoulder because I was
9 upset.

10 Q When you tapped your shoulder on the flag,
11 you asked, what does that mean to you?

12 A Correct.

13 Q And you did this because you were upset?

14 A No.

15 Q And you -- he told you that you can't have
16 blind allegiance to a flag?

17 A No.

18 Q He told you you can't have blind allegiance
19 to a flag?

20 A I don't remember him saying that.

21 Q He told you that you cannot be an Atomicon?

1 A I do not recall that phrase at all, sir.

2 Q You don't recall that?

3 A No.

4 Q And he then told you that you had to have
5 duty to all people regardless of their country?

6 A I do not recall that.

7 Q You don't recall that?

8 A No, sir.

9 Q You got very upset at the time that he made
10 these statements?

11 A The statements that I indicated that he
12 made, it did bother me.

13 Q Bothered you. It made you upset?

14 A Correct. As an American and as a fellow
15 soldier, I was distraught by the statements he made.

16 Q And you interpreted his statements to be
17 disloyal to America?

18 A Correct.

19 Q Now, once you did that, you never reduced
20 this counseling session to a written counseling form,
21 did you?

1 A Not at that time, no.

2 Q Not ever?

3 A No, sir.

4 Q Prior to 2010, the arrest of PFC Manning in
5 May of 2010, you never reduced this allegation to
6 writing?

7 A Correct.

8 Q Now, if you really thought that PFC Manning
9 said disloyal comments to America that would be a
10 serious matter, wouldn't it?

11 A It is a serious matter, sir.

12 Q Listen to my question. That would be a
13 serious matter, wouldn't it?

14 A Yes.

15 Q It would be a serious matter because he had
16 a top secret clearance.

17 A Correct.

18 Q It would be a serious matter because he had
19 access to top confidential information?

20 A Correct.

21 Q Because he's an ALS, an all-source analyst?

1 A Correct.

2 Q And you're his supervisor at this time?

3 A Correct.

4 Q You heard of the phrase I'm sure, if it's
5 not in writing it didn't happen? You've heard of that
6 phrase with regards to counseling, haven't you?

7 A I'm sure at one point I have heard that.

8 Q And that phrase basically means that you
9 need to document things, right?

10 A Correct.

11 Q And, in fact, you said on direct that you
12 would counsel things that you needed to document?

13 A Correct.

14 Q And yet you didn't counsel this, you didn't
15 put it in writing?

16 A I did not.

17 Q Now, you have counseled PFC Manning in the
18 past?

19 A Yes.

20 Q Can I get Defense Exhibit QQ.

21 I show the witness what's been marked as

1 Exhibit QQ for identification. Take a moment,
2 Ms. Showman, and thumb through that. When you're done
3 just look up at me.

4 (Witness reading.)

5 Q You recognize these documents?

6 A I do.

7 Q These are counseling statements that you
8 did for PFC Manning?

9 A Correct.

10 Q And there are three counseling statements
11 in this exhibit?

12 A Yes.

13 Q Let's discuss the first one, okay?

14 A All right.

15 Q This first one is your initial counseling
16 statements; is that correct?

17 A Yes.

18 Q That's when you became his new team leader?

19 A Correct.

20 Q And you counseled him there basically on
21 your expectations and his duties?

1 A Correct.

2 Q And in that counseling statement you noted
3 that PFC Manning seemed to have an excessive caffeine
4 consumption. Do you see that?

5 A Yes.

6 Q You also told him that it was your
7 obligation to hold him to standard?

8 A Correct.

9 Q And later that same day you did hold him to
10 standard, correct?

11 A Yes.

12 Q Let's look at the second counseling
13 statement. In that second counseling statement you
14 counseled him for being late to formation?

15 A Correct.

16 Q And also for basically losing his military
17 bearing?

18 A Yes.

19 Q And you told him in that counseling
20 statement that his actions were unacceptable and
21 wouldn't be tolerated?

1 A Correct.

2 Q You noted your duty to inform him of any
3 deficiency?

4 A Yes.

5 Q You also noted it was your duty to provide
6 corrective training?

7 A Correct.

8 Q Now, in this written counseling, you also
9 noted that you had a duty on uphold the Army values?

10 A Correct.

11 Q And in addition to this event counseling,
12 you also gave monthly performance counselings, correct?

13 A Yes.

14 Q Let's look at the third one.

15 Now, this is a monthly counseling session
16 for June of 2009, correct?

17 A Yes.

18 Q And in this counseling statement you noted
19 that PFC Manning was a smoker?

20 A Correct.

21 Q And you noted that because you said, hey,

1 per regulation, you're not going to get additional time
2 for smoke breaks?

3 A Correct.

4 Q You wanted him to know that?

5 A Correct.

6 Q And you told him actually he would have to
7 request permission for smoke breaks?

8 A Correct.

9 Q And in this counseling statement you also
10 recommended him for soldier of the month board?

11 A Yes.

12 Q So it's clear you had the ability to
13 counsel him on some kind of minor points, correct?

14 A Correct.

15 Q Such as being a smoker, drinking too much
16 caffeine?

17 A Correct.

18 Q And if you could do that, if you can do
19 that in writing, why didn't you reduce the alleged
20 statements, the disloyal statements that you say he
21 said to writing?

1 A As a leader, I felt that I had reached my
2 limitation with the issue so I took it to a higher
3 supervisor. So I took it immediately to Sergeant
4 Mitchell and Adkins.

5 Q As a leader you felt you reached your
6 limitations, what does that mean?

7 A That means if it's a issue, as a specialist
8 in the United States Army that I felt I did not have
9 really the knowledge, background or the capability of
10 writing a counseling statement that needed to be
11 thoroughly elaborated to that extent, I needed to take
12 it to my superiors.

13 Q We need to break that down. You felt you
14 couldn't write the counseling statement?

15 A That's not what I said, sir.

16 Q I want to make sure I understand what you
17 said.

18 So why didn't you write a counseling
19 statement that said, hey, during verbal counseling
20 statement I tapped my shoulder and out of the blue PFC
21 Manning said I have no loyalty to this country, the

1 flag means nothing?

2 A I was instructed not to write the
3 counseling statement. That it would be handled by
4 someone else.

5 Q Okay. We'll get to that.

6 A Okay.

7 Q Because that's a new statement.

8 So let's go before you get to the
9 instruction of not writing it. Why didn't you write
10 the counseling statement right then and there?

11 A Because that's not how it's done, sir. You
12 don't write a counseling statement right on the spot.

13 Q Why not?

14 A That's not how I was trained to do
15 counseling statements. You verbally counsel them.

16 Q Right?

17 A Then you go from there. And then typically
18 you go and get on a computer, write up the counseling
19 statement --

20 Q When do you typically do that?

21 A Depending on when it happened during the

1 day. A lot of the times the next day.

2 Q Well, let's go back to your second
3 statement. The second counseling statement. He was
4 late to formation. When did you counsel him on that
5 day?

6 A The next day.

7 Q You counseled him the next day?

8 A I believe so. Let me check.

9 Q Take a look at the date that PFC Manning
10 signs it.

11 A If you will see, sir, date of counseling is
12 the 7th of April. And the event happened on the 6th of
13 April.

14 Q Okay. So you counseled the next day on
15 this?

16 A Correct.

17 Q And this missing formation stuff?

18 A Correct.

19 Q I guess from your standard how you do
20 things you counsel the next day on these so-called
21 disloyal statements?

1 A It happened in the evening, sir. It
2 happened at the end of shift.

3 Q All right. So maybe we'll give you a day
4 break and you counsel him the second day, wouldn't you?

5 A If that, if that was my duty, yes.

6 Q Wasn't it your duty? You said it was your
7 duty to hold him to standard?

8 A I had handed off the issue to my superior.

9 Q Who did you hand that off to?

10 A Sergeant Mitchell and Adkins.

11 Q Repeat?

12 A Correct.

13 Q I suppose from your answer then one of
14 those people instructed you not to write a counseling
15 statement?

16 A They told me they would take care of the
17 counseling statement.

18 Q Listen to the question. Did one of those
19 people instruct you not to write a counseling
20 statement?

21 A Correct.

1 Q Who?

2 A It was Sergeant Adkins.

3 Q Sergeant Adkins instructed you not to write
4 a counseling statement?

5 A Correct.

6 Q That's your testimony?

7 A Yes.

8 Q All right. And did you ask Sergeant Adkins
9 why you're instructing me not to write a counseling
10 statement?

11 A Yes, I did.

12 Q What did Sergeant Adkins tell you?

13 A He said he would take care of it. He would
14 handle the counseling statement.

15 Q That he would counsel him?

16 A Correct.

17 Q For something that he wasn't there for?

18 A Correct.

19 Q Did you ask Sergeant Adkins why he would do
20 that?

21 A I, I'm assuming I probably would have but I

1 couldn't give you verbatim of what I actually would
2 have said.

3 Q And were you present, I mean, again, my
4 understanding, you're his first line supervisor, right?

5 A Correct.

6 Q Were you present for Sergeant Adkins
7 writing up this second counseling statement?

8 A No.

9 Q Did Sergeant Adkins ever write a counseling
10 statement up?

11 A Not to my knowledge.

12 Q Did you go back to Sergeant Adkins and say
13 why didn't you write a counseling statement?

14 A Yes.

15 Q What did Sergeant Adkins tell you then?

16 A I don't know exactly what he told me, sir.

17 Q Well, you recall going back to him and
18 asking him about this second counseling statement?

19 A Correct.

20 Q And when was that?

21 A That was approximately, probably within,

1 within a few days after the incident.

2 Q Okay. So your testimony is Sergeant Adkins
3 tells you not to write the counseling statement, says
4 he will do it, right?

5 A Correct.

6 Q You see it's not done; is that right?

7 A Well, I assumed it wasn't done.

8 Q Okay. You assume it's not done. Why did
9 you assume it wasn't done?

10 A Well, they hadn't communicated with,
11 communicated to me that it had been done. They also
12 did not have to communicate that information with me.

13 Q When you say they, who are you saying?

14 A Sergeant Mitchell who was my superior and
15 Sergeant Adkins, who was above Sergeant Mitchell.

16 Q They didn't communicate to you that the
17 counseling was done and you felt the need to inquire?

18 A Correct.

19 Q Who did you inquire?

20 A I believe, my assumption is that I would
21 have inquired, spoken to Sergeant Mitchell before I

1 spoke to Sergeant Adkins about the issue. So I
2 probably would have asked both of them.

3 Q All right. But you recall asking Sergeant
4 Adkins specifically?

5 A Correct.

6 Q And Sergeant Adkins told you what?

7 A He told me -- I actually don't remember
8 what he told me but he indicated to me that the
9 situation was being handled.

10 Q And did he tell you how?

11 A No. Not that I remember.

12 Q All right. I guess now he says it's been
13 handled or it's going to be handled. Did you at a
14 later date verify whether or not the counseling
15 statement was done?

16 A I did not verify whether a counseling
17 statement had been done at the earlier date.

18 Q Why not?

19 A I honestly was getting ready for deployment
20 and I had many mission essential taskings to take place
21 and left it up to Sergeant Adkins to handle.

1 Q Do you see how your allegations would be
2 important to capture in a written statement?

3 A I can see that, yes.

4 Q And it would be important because then we
5 wouldn't have to rely upon your memory right now?

6 A Correct.

7 Q We'd have a counseling statement?

8 A Correct.

9 Q And we don't have that?

10 A I understand that, sir.

11 Q We don't have that, do we?

12 A No, we don't.

13 Q And you claim that apparently you went to
14 Sergeant Adkins to get the counseling statement done by
15 him, right?

16 A Yes.

17 Q And you also apparently told him exactly
18 what you allege PFC Manning said?

19 A Yes.

20 Q So you told Sergeant Adkins that PFC
21 Manning said the flag meant nothing to him; he had no

1 loyalty to this country?

2 A Yes.

3 Q That's what you told him?

4 A Yes.

5 Q Now, you even claim at a later date that
6 you told Sergeant Adkins that you thought PFC Manning
7 was a possible spy?

8 A Yes.

9 Q Those were your words, possible spy?

10 A Yes.

11 Q What made you think at that point he was a
12 possible spy?

13 A Everything that kind of led up to specific
14 circumstances and just due to my training, anyone that
15 is kind of questionable I just kind of feel that they
16 should be treated as though their actions are
17 questionable as far as being someone that would gather
18 information and disseminate them to foreign --

19 Q Well, when you're telling me the possible
20 spy it's at the time that you're reporting these two
21 statements?

1 A It was within that week.

2 Q And what did you know within that week,
3 because as far as I know it's the alleged statement
4 about the flag and loyalty. What in that week did you
5 know that made you think he was a possible spy?

6 A It was his actions up to that point, sir.

7 Q What actions?

8 A The reaction by misinformation, the fact that
9 you --

10 Q Let's break it down.

11 A Okay.

12 Q Misinformation, how did that make him a
13 possible spy?

14 A That indicated someone that may not be able
15 to handle high stress levels in a job as an intel,
16 intelligencer. I'm not a doctor, so that is my
17 personal opinion. So that made me kind of question
18 things. But at that time I didn't feel that he could
19 have been a possible spy. I just met the individual
20 within the month.

21 Q But I only want to concentrate to the facts

1 that you rely upon to say he was a possible spy.

2 A Okay.

3 Q Give me your first fact.

4 A First fact is the -- I have to use that
5 first incident because it helped lead up to the point
6 that I felt that he could have been questionable. So I
7 keep that in my statement that his reaction after
8 misinformation could possibly lead up to that.

9 Then whenever you would ask him to do
10 things he would handle the task very enthusiastically.
11 But any time you tried to pull him off of that task,
12 especially if it was a computer task, he would appear
13 to be very flustered and not really be able to function
14 properly after that point.

15 Q Let's stop there then.

16 What made that fact, in your mind, say this
17 is a possible spy?

18 A The, I felt as though it just wasn't, it
19 wasn't normal for someone that should be handling
20 classified information. It was honestly a feeling in
21 my gut more than anything. Someone that was displaying

1 that type of behavior and knowing, having knowledge
2 that I had of what we are to look for with people that
3 could possibly disseminate secret information.

4 Q Okay. So now I get a fact.

5 So that's what I want to get to. I
6 understand you might think his reaction was not to
7 standard. But taking that reaction to a conclusion
8 where you say I think he's a spy, that's what I was
9 trying to connect.

10 So you say, based upon his reaction then
11 that would lead to somebody that you couldn't trust.
12 Is that what you're saying?

13 A Yes. If, we actually, there are lists in
14 the military of things to watch for in individuals that
15 could be potential risks.

16 Q Okay. What were you, from that list, can
17 you recall what you noted in order to say I think he's
18 a spy?

19 A Abnormal outbursts, mental situations.
20 Just kind of acting very protective of their time on
21 classified information. Just little things that would

1 kind of instantly change in someone's personality when
2 dealing with classified information.

3 Q All right. Anything else that you
4 identified in order to think in your mind he's a
5 possible spy?

6 A Yes, there was a conversation that he had
7 with me that combined with all the other things made me
8 really wonder.

9 Q Before you went to Sergeant Adkins?

10 A Yes, it actually happened before I went to
11 Sergeant Adkins.

12 Q Okay. And that conversation I take it is,
13 is what? He had to scrub the internet, is that the
14 conversation?

15 A Correct, correct.

16 Q What did he say?

17 A He said that before he joined the military
18 he had to make sure that he removed everything that
19 with his name on it to include blogs and things like
20 that from the internet otherwise he would not have
21 received a top secret clearance.

1 Q Did you know at that point he was gay?

2 A No, I didn't know that he was gay.

3 Q Did you suspect that he was gay?

4 A I had assumption that he probably was.

5 Q Is it possible he was talking about his
6 statements and his affiliation with blogs about don't
7 ask, don't tell, and basically gay agenda issues?

8 A It is possible.

9 Q Okay. So anything else, besides that, that
10 caused you to think you know what, he's a spy?

11 A That, as well as a conversation he had with
12 myself and Sergeant Adkins. I don't remember the
13 timeline. I believe it was after JRTC that we sat down
14 with him and had a conversation.

15 Q Okay. What was in that conversation?

16 A He indicated that he was very paranoid that
17 people were listening in on his conversations and he
18 couldn't trust his work environment.

19 Q And could that be, have anything to do with
20 possibly being gay and serving in the military?

21 A I do not think so because he, to my

1 knowledge, never spoke about being gay in the office.

2 Q And that was because there was a policy,
3 don't ask, don't tell, right?

4 A Correct.

5 Q And anything else besides that?

6 A Not that really comes to mind at this time.

7 Q Okay. So then you go to Sergeant Adkins
8 and you say what PFC Manning allegedly said to you and
9 then you say I think he's a possible spy. You used
10 those words?

11 A Correct.

12 Q What does Sergeant Adkins do in response to
13 that?

14 A He kind of looked at me and said all
15 right -- I'm pretty sure we had a discussion how to try
16 to get him, you know, the help he needs because if he's
17 overly stressed then, you know, maybe we can help him
18 with that. Maybe it's just something that we're
19 assuming.

20 He didn't necessarily entertain the idea
21 that I presented to him.

1 Q So you go to him and you say, hey, I just
2 was with PFC Manning, I counseled him, he said the flag
3 means nothing to me, I have no loyalty to this country.
4 Sergeant Adkins, I think he's a spy. You say that?

5 A Correct.

6 Q And Sergeant Adkins doesn't entertain that?

7 A He didn't entertain the I think he's a spy
8 statement. Mainly he's a soldier and he would like to
9 give him the benefit of the doubt. So he said he would
10 handle the situation.

11 Q But you're a soldier too, right?

12 A Correct.

13 Q And you're the supervisor?

14 A Correct.

15 Q And you tell him this. I guess when you're
16 telling him this you believe what you're saying, right?

17 A I believe it, yes.

18 Q All right. So when Sergeant Adkins hears
19 this, he doesn't actually do anything? Does he do
20 anything at that point?

21 A At that point, I believe he stepped out of

1 the room. I was actually released for the evening
2 before Manning was. So I'm not sure what he did
3 directly after our conversation.

4 Q I imagine you never had one of your
5 soldiers say he had no loyalty to the country?

6 A Never.

7 Q So this would be a big event for you?

8 A Correct.

9 Q So when nothing was done day two, day
10 three, day four, day five, what did you do?

11 A I went and spoke with Sergeant Adkins.

12 Q And what did you say?

13 A I asked him what is going to be done and as
14 time progressed what would happen in the future.

15 Q Okay. What did Sergeant Adkins tell you?

16 A He told me that he was speaking to
17 individuals that he needed to speak to, I'm assuming he
18 was referring to his superiors, and that they would
19 make the decision.

20 Q Okay. And you went, is this the day two,
21 day three when you went to Sergeant Adkins?

1 A Approximately.

2 Q All right. And then did you ever at a
3 later date go back to him and say, what's going on with
4 this issue?

5 A Yes, I did.

6 Q How many times?

7 A There was a couple of times.

8 Q Okay. Couple times meaning two?

9 A Meaning two, possibly three.

10 Q And tell us everything you know about the
11 first time.

12 A The first time we discussed he actually
13 indicated to me that he would like me to have Manning
14 contact behavioral health again to see if there's
15 anything they can assist him with. So I did that.

16 Q Okay.

17 A And then that's pretty much how that first
18 conversation went.

19 Q Well, in that first conversation did you
20 say, well, behavioral health is nice, he's an analyst,
21 he says he has no loyalty to this country, he shouldn't

1 be an analyst, did you say that?

2 A No.

3 Q Why not?

4 A Because that's not what I said. Because I
5 didn't have facts. I had no solid facts to --

6 Q Did you believe he should be an analyst?

7 A Honestly, sir, I wasn't an analyst long
8 enough to make that decision but no, I felt he
9 shouldn't have.

10 Q I guess if he had no loyalty to the country
11 or flag, did you believe he needed to be a soldier?

12 A No.

13 Q So did you say, behavioral health is nice,
14 but this guy shouldn't even be a soldier?

15 A I was fully supportive of behavioral
16 health.

17 Q No. My question was: Did you tell
18 Sergeant Adkins behavioral health is nice, but this guy
19 shouldn't even be a soldier?

20 A I made a statement that we should consider
21 looking into whether he needs to stay in the military.

1 Q Why did you feel that he should consider
2 whether or not he should remain in the military?

3 A Because it didn't appear as though he truly
4 believed in what it meant to be a soldier.

5 Q So I guess if you really believed that,
6 then why would you just sit idly by and let one of your
7 soldiers then that you believe didn't need to be a
8 soldier, had no loyalty to the country actually stay in
9 the Army?

10 A I had no control over whether he stayed or
11 went, sir.

12 Q Well, you did have control about talking to
13 your chain of command, right?

14 A Correct.

15 Q So if you believed that, why didn't you go
16 over Sergeant First Class Adkins' head when nothing was
17 being done to get him out of the Army?

18 A Honestly, I did not have any information on
19 what was done or was not done. I did my duty by going
20 to my superiors. At that point it would have been
21 inappropriate for me to not trust Sergeant Adkins' word

1 and go above his head. That's inappropriate.

2 Q Well, it might have been but when you're
3 getting ready for deployment, PFC Manning deployed with
4 you, right?

5 A Correct.

6 Q And he was one of your soldiers when you
7 deployed?

8 A Initially, yes.

9 Q You were his supervisor again?

10 A Correct.

11 Q So you if you really felt that he had no
12 loyalty to the country, the flag meant nothing to him,
13 he was a possible spy, why would you deploy with this
14 guy?

15 A I was told that the decision had been made
16 and that there was nothing I could do about it.

17 Q Who told you that?

18 A Sergeant Adkins.

19 Q And at that point did you feel that perhaps
20 it might be appropriate to go over Sergeant First Class
21 Adkins' head?

1 A I did not feel it was appropriate.

2 Q Why not?

3 A I honestly wasn't -- knowing my unit and my
4 chain of command, they would have wanted me to go
5 through Sergeant Adkins because that's what is
6 appropriate of a specialist and if I were to just show
7 up at the S2's door or the First Sergeant's door, the
8 commander's door of the company, they would have
9 dismissed me and had me go through Sergeant Adkins.

10 Q Would they, doesn't your commander and
11 first sergeant have a open door?

12 A They do, however I did not have an issue
13 with my first line supervisor, so therefore it was an
14 issue that they could have handled.

15 Q Well, if the commander and first sergeant
16 is open door policy, if you have any issue you come to
17 me?

18 A Correct.

19 Q This would have been an issue?

20 A It would have been an issue.

21 Q It would have been an issue of commander, I

1 think you should know one of your soldiers has no
2 loyalty to this country?

3 A Correct.

4 Q Why didn't you go to your commander or your
5 first sergeant under the open door policy?

6 A I did not feel it was appropriate.

7 Q Because?

8 A Because I took it through the appropriate
9 channels.

10 Q And nothing was being done, right?

11 A I did not have any knowledge of whether it
12 was done or -- I did not know how far it went up the
13 chain of command.

14 Q Did you ever ask?

15 A I --

16 MS. OVERGAARD: Objection. These questions
17 have been asked and answered five different times.

18 THE COURT: I'll let you have a little
19 latitude but we are asking the same kinds of things.
20 Go ahead.

21 MR. COOMBS: Okay, Your Honor, I don't

1 believe I am. I believe I'm exploring the basis for
2 the reliability of the statement because if she
3 believed it --

4 THE COURT: I understand where you're going
5 with it.

6 BY MR. COOMBS:

7 Q So did you, did you ask how far it went up
8 the chain?

9 A I didn't ask how far. I asked if he
10 actually spoke to individuals that could have made the
11 decision and he said he did.

12 Q So then Sergeant Adkins said he spoke to
13 people who could make a decision?

14 A Correct.

15 Q Did he tell you who he spoke to?

16 A No.

17 Q Did you ask?

18 A I don't recall whether I did or did not.
19 It's possible I did ask.

20 Q So then when you deploy, he's one of your
21 soldiers at that point. Do you bring it up at all that

1 I don't want to be supervising this guy?

2 A No.

3 Q Why not?

4 A At that point I was told to leave the issue
5 and to drive on and complete the mission that's one of
6 my primary tasks as a soldier.

7 Q So you put that out of your mind?

8 A Yes, actually.

9 Q Now, you know what a DROG is?

10 A Correct.

11 Q A DROG is information that can be filed
12 against somebody that has a clearance?

13 A Correct.

14 Q And you knew what a DROG was at the time of
15 the alleged statements?

16 A Yes.

17 Q You agree with me that a DROG should be
18 filed if someone with a clearance makes disloyal to
19 America statements?

20 A I would assume that. I honestly don't know
21 what regulation states the perimeters are but I at that

1 time would have assumed that, yes.

2 Q And you assume that because somebody who
3 has no loyalty to the country really shouldn't have a
4 clearance?

5 A Correct.

6 Q And did you ever report this to the company
7 commander who would file the DROG?

8 A No.

9 Q Why not?

10 A It was not my position to do so.

11 Q Did you ever ask somebody to report this so
12 a DROG could be filed?

13 A At that time I wasn't quite sure whether
14 DROGs needed more information and when I was instructed
15 that the situation was going to be handled I kind of
16 took that as being truth.

17 Q So you at that time thought about DROGs?

18 A They weren't at the forefront of my mind.
19 I had minimal kind of association with DROGs. So at
20 that time if I thought about DROGs I thought you
21 probably needed more, more paperwork to submit a DROG

1 for something like that.

2 Q So right now on the stand did you think
3 about DROGs or not?

4 A Not that I remember.

5 Q And you think if you did, you would have
6 thought maybe more paperwork would be needed?

7 A Yes.

8 Q All right. Now, you recall being
9 questioned by CID after PFC Manning's arrest, correct?

10 A Yes.

11 Q And, in fact, immediately after the arrest,
12 CID interviewed everyone in the S2 session?

13 A I don't know that for a fact. I assume so.

14 Q So you know that CID came and was
15 conducting their investigation?

16 A Correct.

17 Q And you were one of the individuals they
18 did an interview of on 27 May 2010?

19 A I don't remember the date, sir, but they
20 did interview me, yes.

21 Q And at that point when they interviewed

1 you, they told you why they were doing it, right?

2 A They indicated -- I believe they did, yes.

3 Q I mean, you understood that PFC Manning was
4 being arrested?

5 A Actually, at that time I knew he was
6 arrested but they didn't give us facts on what he was
7 actually arrested for.

8 Q Well, you understood that general
9 allegation was that he had disclosed classified
10 information?

11 A What I understood is that someone disclosed
12 classified information and he was taken as a possible
13 suspect.

14 Q Okay. So you understood that CID suspected
15 him?

16 A Yes.

17 Q And at that point when they were doing
18 their investigation they were doing a canvas interview
19 of everybody to try to get as many facts as they could?

20 A Yes, I believe so.

21 Q And you were one of the people that they

1 interviewed?

2 A Correct.

3 Q And obviously when they were interviewing
4 you, you knew it was important to tell them everything
5 you knew?

6 A Yes.

7 Q Anything that might help them in their
8 investigation?

9 A Correct.

10 Q And, in fact, you did tell them several
11 things.

12 Do you recall telling them that you believe
13 he was a closed person?

14 A A closed person?

15 Q Correct.

16 A It's possible that I used that terminology,
17 yes.

18 Q Do you recall telling them that PFC Manning
19 did not really hang out with other people in the unit?

20 A To my knowledge, yes, that's what I told
21 them.

1 Q Do you recall describing PFC Manning as a
2 pressure cooker?

3 A I don't, I don't recall using those words
4 actually. It's possible.

5 Q Do you recall telling them that PFC Manning
6 tried to stay late at work?

7 A Yes.

8 Q And do you recall mentioning that he would
9 discuss politics and global politics?

10 A Correct.

11 Q Do you recall telling him that he even left
12 his camera once in the SCIF and that was not allowed?

13 A Correct.

14 Q So you told them about wanting to stay late
15 and leaving his camera in the SCIF as basically
16 instances where something wasn't quite right with what
17 PFC Manning was doing, correct?

18 A Correct. It was abnormal compared to the
19 rest of the soldiers in our unit.

20 Q And on that date, you never told them about
21 disloyal statements?

1 A I don't, I don't recall.

2 Q You don't recall?

3 A Whether that's true or not.

4 Q All right. So PFC Manning is arrested,
5 they're investigating the release of classified
6 information, he's the prime suspect, you're telling
7 them about staying late, being a pressure cooker, not
8 hanging out with anybody and that even one time leaving
9 a camera in the SCIF and you don't recall telling them
10 about anti-American disloyal statements?

11 A I recall indicating that in a sworn
12 statement taken in Iraq. I don't recall the
13 individuals -- because I was interviewed by two
14 separate groups of individuals.

15 Q Right?

16 A And I'm not quite sure which ones you're
17 referring to.

18 Q All right. Well, I'm referring to the
19 interview that you initially did in 27 May. Now, you
20 did a interview again in June --

21 A Correct.

1 Q -- and that's the first time you actually
2 put it in a sworn statement in June about this, right?

3 A I know, actually I believe I mentioned it
4 in the first sworn statement with the individuals that
5 came to Iraq and visited us in FOB Hammer.

6 Q How many sworn statements do you recall
7 giving?

8 A I recall giving two.

9 Q And in those sworn statements, do you
10 recall the dates of those?

11 A I do not recall the dates of the sworn
12 statements.

13 Q I'm going to show you that sworn
14 statements. Let me get these marked first.

15 I'm showing you Defense Exhibit Romeo Romeo
16 for identification. Take a look at that and when
17 you're done look up at me.

18 (Witness reading.)

19 Q So are these your two sworn statements?

20 A Yes.

21 Q And these are the only sworn statements

1 you've given?

2 A From what I can remember. Yes.

3 Q All right. So one of those sworn
4 statements is June 18th of 2010?

5 A Correct.

6 Q And another is January 19th of 2011?

7 A Yes.

8 Q So what I'm talking about is 27 May 2010,
9 the canvas interview. Why didn't you tell them on that
10 day about these alleged statements if they really
11 happened?

12 A I believe at that time they were asking me
13 very direct questions and I was answering questions and
14 from what I can remember they weren't -- they didn't
15 open the floor to any add-ons that I felt was
16 necessary.

17 I don't quite remember that, that actually
18 personal questioning.

19 Q What was the direct question that got to
20 his left a computer or a camera in the SCIF?

21 A They probably -- I don't remember the

1 questions verbatim, but they probably asked me if he
2 did anything that would have violated any security
3 requirements or regulations in the actually SCIF.

4 Q So when they asked you that question, it
5 doesn't pop in your mind, you know what, right before
6 the deployment, he did say he had no loyalty to the
7 country and the flag means nothing to him?

8 A I'm sure it popped into my mind.

9 Q Not enough to say anything?

10 A I was to answer specific questions.

11 Q You didn't feel you should volunteer that?

12 A I'm sure I felt I should have volunteered
13 that.

14 Q But you didn't?

15 A I guess I didn't because I don't see that
16 in front of me.

17 Q Well, I don't need you to guess. When CID
18 pulled you aside on 27 May 2010, days after PFC Manning
19 being arrested, you see the agents going around
20 confiscating computers, interviewing everyone in the S2
21 section to include yourself?

1 A Correct.

2 Q You know PFC Manning has been arrested.
3 Classified information has been leaked. He's the prime
4 suspect. You don't say at that point, you know what,
5 I've got some information for you guys?

6 A I do not remember anything that was said
7 during that interview.

8 Q Nothing?

9 A I truthfully do not remember.

10 Q So we could use the sworn statement when
11 the statement happened so we can confirm that you're
12 not making it up in June, correct?

13 A Correct.

14 Q So in June of 2010, after PFC Manning is
15 arrested, after all the issues come out, that's the
16 first you time you write down in a sworn statement, you
17 know what, he said he had no loyalty to this country;
18 is that correct?

19 A Yes.

20 Q And let's look at that statement for a
21 moment. Where do you write that? I can help you, it's

1 in the middle of page two.

2 A Can you elaborate on that question?

3 Q Yeah, where do you write the facts that PFC
4 Manning said anti-American disloyal comments to you?

5 A Where on the actual statement I wrote it?

6 Q In the statement.

7 A Yes, I wrote that following, indicating
8 that (inaudible) went to DC to visit him, and then I
9 indicated that I was verbally counseling Manning.

10 Q Where is that at?

11 A That's halfway down page number two.

12 Q All right. So now, I imagine at this point
13 you understand why you're being interviewed by CID?

14 A Yes.

15 Q You understand at this point, this whole
16 thing is flashed on the news, the PFC Manning arrest,
17 the leaks that are happening, correct?

18 A I honestly didn't see anything on the news
19 at that point.

20 Q Nothing?

21 A I had very limited TV access. I was still

1 in Iraq.

2 Q Let's go with what you knew then. Did you
3 know at that point that he was arrested for leaking
4 classified information?

5 A Correct, yes.

6 Q Did you know at that point then, I guess
7 you're suspicions of him being a spy and perhaps not
8 having loyalty to the country, maybe that was true
9 then?

10 A Yes.

11 Q So now you have the sworn statement of
12 yours. Why doesn't it start off with this? Why
13 doesn't it start off with, you know what, I was right,
14 no one listened to me?

15 A This sworn statement was following a
16 three-hour questioning and I was to answer questions --

17 Q Right?

18 A -- and then write in my own handwriting the
19 flow of their questioning.

20 Q All right. Let's look. This is in your
21 handwriting, correct?

1 A Yes.

2 Q So what you're trying to tell me is then
3 they told you to write it in the flow of their
4 questioning as opposed to what you thought was most
5 important?

6 A From my knowledge of a sworn statement, it
7 doesn't line up in what is most important. It's the
8 flow of what actually is the truth.

9 Q Okay. So when you're writing this out,
10 you're talking about a lot of stuff and you get to page
11 two with the disloyal statements. Wouldn't you agree
12 with me that that probably is the most important thing
13 in this?

14 MS. OVERGAARD: Objection, ma'am. Asked
15 and answered.

16 THE COURT: Overruled.

17 A I, I would assume that possibly it is very
18 important.

19 Q Okay. And wouldn't it, if it were the
20 truth and important, wouldn't that be something you
21 would lead off with?

1 A No, because that's not, that's not how our
2 actual questioning session took place.

3 Q Yeah. But this, you're not writing this as
4 they're asking questions, are you?

5 A I answered several questions. We wrote
6 down the answers and I was to further elaborate the
7 answers on a sworn statement.

8 Q So what you're saying now your testimony is
9 that you wrote this out based upon the order in which
10 they asked questions?

11 A Yes.

12 Q And so CID apparently didn't ask you a
13 question about disloyal statements until about halfway
14 through the page two?

15 A I guess so, yes.

16 Q So that's when they decided to cover that
17 important fact?

18 A I would believe so, yes.

19 Q Let's go ahead and now talk about an EEO
20 complaint.

21 Now, you and PFC Manning aren't friends,

1 correct?

2 A No.

3 Q You don't like him?

4 A I didn't have an opinion towards him
5 personally one way or the other.

6 Q So he wasn't important enough for you to
7 decide whether you liked him or not?

8 A He wasn't very important to me but it
9 wasn't a social environment. It was strictly
10 professional.

11 Q So you have no --

12 (Question and Answer inaudible.)

13 Q You never got along with him, correct?

14 A I can't agree with that.

15 Q You think you got along with him?

16 A Yes.

17 Q It's true that he filed an EEO complaint
18 against you during the deployment?

19 A I believe so.

20 Q You know so?

21 A I don't know for a fact it was him.

1 Q You knew that he filed an EEO complaint
2 against you, you're saying you don't know that?

3 A I did not know, no one factually told me
4 that he was the person that filed against me.

5 Q Let's look at the 19 January 2011 sworn
6 statement.

7 A Yes.

8 Q Let's turn to page two.

9 A Okay.

10 Q Actually, before we get to page two, I'll
11 cover that in a moment. Let's go to your first
12 statement. The handwritten one.

13 A Yes.

14 Q And we'll turn to page 4 of 5. I'm going
15 to read this but I want you to follow along as I read
16 this and you tell me if I read this correctly?

17 A Okay.

18 Q Manning made a complaint to EEO about
19 Captain Martin, CW2 Ehresman and myself.

20 Did I read that correctly?

21 A You did read that correctly.

1 Q You knew he made a complaint against you?

2 A I assumed he did. No one told me for a
3 fact.

4 Q Well, you didn't qualify it in this, did
5 you?

6 A No, I didn't.

7 Q So at least in this sworn statement you
8 said he made the complaint against you?

9 A Yes, yes.

10 Q And his complaint against you was for using
11 the derogatory term such as faggoty; is that correct?

12 A Yes.

13 Q And you, in fact, admitted to using the
14 word faggoty?

15 A Correct.

16 Q But you say that you used that term in
17 reference to not being able to do so many pushups as
18 opposed to in reference to being gay?

19 A Correct.

20 Q So you believe PFC Manning misinterpreted
21 your use of faggoty as derogatory?

1 A Yes.

2 Q Now, PFC Manning could have misinterpreted
3 something you said. Can you see how it's possible that
4 you could have misinterpreted something that PFC
5 Manning said?

6 A As a general statement, yes.

7 Q Is it possible that you misinterpreted his
8 statements about having duty to all people and not
9 having blind allegiance to a flag?

10 A I do not believe I misinterpreted that at
11 all.

12 Q Not possible?

13 A No.

14 Q Not in your mind?

15 A No.

16 Q All right. Now, PFC Manning also
17 complained about your use of several offensive
18 references within the targeting office rules that you
19 posted. Correct?

20 A I don't recall. I'm not quite sure what
21 you're speaking of, sir.

1 Q All right. I'd like to refresh your
2 memory.

3 I'm showing you what's been marked as
4 Defense Exhibit Sierra Sierra for identification.

5 Do you recognize that?

6 (Witness reading.)

7 A I do recognize this, yes.

8 Q That's the targeting office rules that you
9 posted?

10 A It was up at my computer, yes.

11 Q Not my question. That's the target office
12 rules that you posted?

13 A I don't know how to answer that question
14 because I'm not the one that actually created this
15 document. But yes, I placed it above my computer
16 console, yes.

17 Q Okay. Are you saying Chief Hack created
18 this document?

19 A From what I remember, yes.

20 Q So you're denying creating this document?

21 A I am. I probably helped with some of the

1 lines but it was overall his document.

2 Q Let's go through some of these lines.

3 The first one you said: You must knock on
4 the door prior to entering. Is that correct?

5 A Correct.

6 Q Then the second one says: If you have
7 nothing smart to say, then it better not come out of
8 your mouth. Correct?

9 A Correct.

10 Q Then you say: This office belongs to CW2
11 Hack and Specialist Showman. Keep your grubby hands
12 out.

13 A That's what it says.

14 Q The fourth says: Unless your chest carries
15 some heavy rank, don't even bother knocking.

16 A That's what it says.

17 Q The fifth said: The individuals that own
18 this office are in the business for catching shit bags.
19 If you think for one second you can come in here and
20 bug us with sissy shit you might want to rethink your
21 pathetic life.

1 A That is what it says.

2 Q Then it says: Targeting will not play
3 games in your lane -- and then you use what looks to be
4 something that stands for fucking; is that correct?

5 A Yes, that's what it looks like.

6 Q So if it is f'n games that you want to
7 play, then by all means drag my ass in with you, but
8 beware, you will lose.

9 A I see that here, yes.

10 Q Then the seventh rule is: Any of these
11 rules confuse you, then maybe you should turn your
12 sorry ass around because you have no business being in
13 my office?

14 A I see that.

15 Q And then lastly: Go away.

16 A See that as well.

17 Q These are the rules that you had posted
18 above your computer?

19 A I know that we had targeting rules, I
20 actually do not remember some of these rules, but yes,
21 this was 100 percent a joke.

1 Q 100 percent a joke?

2 A There was no door. There was no actual
3 office. There were two computers sitting next to each
4 other.

5 Q So you're saying that this say joke?

6 A Yes.

7 Q And that's why you posted it?

8 A That, to my understanding, Chief Hack and I
9 laughed about it. And so did several other soldiers in
10 the shop.

11 Q So Chief Hack would support your opinion
12 that this was a joke?

13 A I believe he would, yes.

14 Q Why do you believe that?

15 A Mainly because there definitely was not an
16 office. There might be a couple of lines that he would
17 consider something that he was serious about, but the
18 overall, I guess, intention of this was, I guess to
19 lighten the situation because there was definitely not
20 an office for people to actually come to.

21 Q So I'm missing the gist. Can you explain

1 to me what the joke was supposed to be?

2 A The joke was that we were being really
3 serious about having an actual targeting office and we
4 were making office rules that didn't necessarily make
5 sense for the mission.

6 Q And why was that funny?

7 A It's funny to, to most soldiers. It was
8 funny in the shop at the time.

9 Q Retrieving Defense Exhibit Sierra Sierra
10 for identification and offering into evidence.

11 THE COURT: Any objection?

12 MS. OVERGAARD: No, ma'am.

13 THE COURT: Exhibit Sierra Sierra is
14 admitted.

15 BY MR. COOMBS:

16 Q Now, at one point during the deployment,
17 PFC Manning punched you?

18 A Yes.

19 Q He hit you in the face?

20 A Yes.

21 Q And you didn't like getting hit in the

1 face?

2 A No.

3 Q Do you recall saying I can't believe he
4 messed with me?

5 A I believe, I recall making a statement like
6 that, yes.

7 Q You recall saying I was the last person he
8 probably should have messed with?

9 A I don't recall saying that in those words.

10 Q Let me get the words right. I was the last
11 person he probably should have punched?

12 A The first part of that statement I believe
13 is a little off from my memory.

14 Q Do you recall giving a statement in the
15 documentary, we steal secrets?

16 A Yes.

17 Q And you gave a statement in that film,
18 correct?

19 A Yes.

20 Q Now, in that film, did you say I was the
21 last person he probably should have punched?

1 A I honestly haven't seen the documentary.
2 But that's not, that's not -- I worded something like
3 that but I don't recall it being worded exactly like
4 that.

5 Q I'll refresh your memory.

6 THE COURT: Mr. Coombs, has 24 Exhibit been
7 marked in some fashion?

8 MR. COOMBS: It's not an exhibit. It's a
9 video of her previous statement.

10 THE COURT: Well, it's going to be in some
11 fashion --

12 MR. COOMBS: I'll reduce this --

13 MS. OVERGAARD: Ma'am, we haven't seen this
14 video before.

15 THE COURT: Do you want a recess?

16 MS. OVERGAARD: We would like to see the
17 video.

18 THE COURT: How long is the video?

19 MR. COOMBS: Not long, ma'am.

20 THE COURT: All right. 20 minutes
21 acceptable?

1 MS. OVERGAARD: Depends how long the video
2 is, I guess.

3 THE COURT: 20 minutes and go ahead and
4 show the government the video.

5 Ms. Showman, don't discuss your testimony
6 or the knowledge of the case with anyone.

7 (Break in proceedings.)

8 THE COURT: Court is called to order. Let
9 the record reflect all parties present when the court
10 last recessed are again present.

11 The witness on the witness stand.

12 Government, have you had the opportunity to
13 do what you asked me to do?

14 MS. OVERGAARD: Yes, ma'am. We reviewed
15 two clips from the video.

16 THE COURT: Mr. Coombs, are you ready to
17 proceed?

18 BY MR. COOMBS:

19 Q Ms. Showman, you indicated that you could
20 not recall, so I want to go ahead and play a clip for
21 you.

1 (Playing video.)

2 Q So you see there you say: I was the last
3 person he probably should have punched?

4 A Yes, I saw that.

5 Q So does that refresh your memory?

6 A It does.

7 MR. COOMBS: Putting in front of the
8 witness Defense Exhibit Quebec Quebec for
9 identification.

10 Offering into evidence Defense Exhibit
11 Quebec, Quebec.

12 THE COURT: Any objection?

13 MS. OVERGAARD: No objection.

14 THE COURT: That's Exhibit Quebec Quebec
15 was admitted.

16 BY MR. COOMBS:

17 Q Now, the clip we just saw, that was from
18 the movie, We Steal Secrets?

19 A Yes.

20 Q And this is a documentary that was released
21 nationwide in May of this year?

1 A I don't know when it was released, sir.

2 Q Do you know that it was released this year?

3 A Yes.

4 Q You gave an interview for that documentary
5 obviously?

6 A Yes.

7 Q You actually appear in the movie?

8 A From what my parents have indicated, yes, I
9 have appeared.

10 Q And they flew you to New York for the
11 interview; is that correct?

12 A Yes.

13 Q Your flight and hotel and travel expenses
14 were paid?

15 A Yes.

16 Q And you gave this interview after your
17 testimony in the Article 32, excuse me, after your
18 testimony in the Article 32 hearing?

19 A Correct.

20 Q And you knew at the time that you gave this
21 interview that you were going to be a witness in this

1 case?

2 A It was, I didn't know for sure if I was
3 going to be a witness in this trial. I honestly didn't
4 know what the kind, what was going to happen after the
5 Article 32 hearing.

6 Q The Government didn't inform you you would
7 be one of their witnesses?

8 A They said there was a chance but I didn't
9 know what actual court appearance would be needed. I
10 didn't know the process of what needed to happen.

11 Q All right. So at the time you did this
12 interview, you're telling us that you didn't believe
13 that you would be testifying in a court-martial?

14 A I knew there was a chance that I would be
15 testifying.

16 Q And you did this interview actually to make
17 PFC Manning look bad?

18 A No.

19 Q You didn't do this interview to make him
20 look bad?

21 A No.

1 Q You said negative comments about him,
2 correct?

3 A I told truths about situations that took
4 place.

5 Q My question was, you made negative comments
6 about him?

7 A I didn't believe they were negative so I
8 can't say that that is correct.

9 Q You didn't believe any of your comments
10 were negative?

11 A I -- no.

12 Q Not at all?

13 A No.

14 Q Okay. Do you recall, well, actually we'll
15 table that for one moment. I'll come back to that and
16 you tell me if you think it was negative.

17 You have a Twitter account, correct?

18 A Yes.

19 Q And actually more accurately used to have a
20 Twitter account?

21 A Yes.

1 Q And on September 12th of 2012 you sent out
2 a tweet regarding PFC Manning and his supporters,
3 correct?

4 A Yes.

5 Q And in that tweet you stated: Ignorant
6 people break the rules and say it's honorable.
7 Ignorant thoughtless followers support Manning without
8 even knowing the truth?

9 A Yes, I said that.

10 Q That's what you said?

11 A Yes.

12 Q So you don't support PFC Manning?

13 A I don't support what was allegedly, what
14 allegedly took place.

15 Q And I guess you would say that anyone who
16 would be ignorant?

17 A No one understood the true facts at that
18 point, to my beliefs.

19 Q Okay. And I guess when you say ignorant
20 people break the rules, you're referring to PFC
21 Manning?

1 A I was referring to anyone in general that
2 would break the rules and be called a hero, yes.

3 Q And so in this instance you're referring to
4 PFC Manning?

5 A Yes.

6 Q Now, going back to what you said, you
7 didn't think you said anything negative in there in the
8 "We Steal Secrets" in your opinion you stated, this was
9 your opinion, that his actions showed that he had no
10 allegiance to this country?

11 A Can you identify when you're referring to
12 that statement?

13 Q With regards to the "We Steal Secrets"?

14 A Okay.

15 Q You told them, in your opinion his actions
16 showed that he had no allegiance to this country?

17 A I do not remember saying that.

18 Q You don't remember saying that?

19 A No.

20 Q Do you remember saying, in your opinion his
21 actions showed that he had no desire for our country's

1 well-being?

2 A I don't recall that statement either.

3 Q Do you recall saying you believe that he
4 had a desire to do damage to our country?

5 A I don't recall that.

6 MR. COOMBS: Can I have the next CD marked?

7 MS. OVERGAARD: Government objects to the
8 use of this but she doesn't actually say that in the
9 clip. We'll find out in a moment.

10 THE COURT: Let's see what the clip says.

11 MR. COOMBS: I'm going to play what's been
12 marked as Defense Exhibit Uniform Uniform for
13 identification.

14 ("VIDEO: Somebody who knowingly joins the
15 military, intentionally gets a security
16 clearance because they'll be able to have
17 access to more information that way,
18 completely has a disregard for military
19 regulation, breaks a federal law by taking
20 classified information and not only giving
21 it to an unclassified source but a source

1 that's not even in America. That's not a
2 whistleblower, that's somebody who, in my
3 opinion, has no allegiance to this country
4 and in my opinion has no desire for, for
5 our country's well-being. Has a desire for
6 the outside sources to possibly do damage
7 to our country.") - END OF VIDEO -

8 BY MR. COOMBS:

9 Q That's your voice, isn't it?

10 A Yes.

11 Q So I'll ask you these questions again.
12 Does it refresh your memory now that you said in your
13 opinion his actions showed that he had no allegiance to
14 this country?

15 A That is what, that is what I said.

16 I don't recall that that question was
17 actually identified as Manning, in particular. It was
18 actually a broad, it was actually a broad question and
19 they do not show that obviously.

20 Q Are you saying that in my opinion his
21 actions showed -- this is what you say, I quote you:

1 In my opinion, his actions showed that he had no
2 allegiance to his country.

3 MS. OVERGAARD: That's a
4 mischaracterization. She said somebody, not his
5 actions.

6 MR. COOMBS: Well, we can play it again.

7 THE COURT: Go ahead.

8 ("VIDEO: Somebody who knowingly joins the
9 military, intentionally gets a security
10 clearance because they'll be able to have
11 access to more information that way,
12 completely has a disregard for military
13 regulation, breaks a federal law by taking
14 classified information and not only giving
15 it to an unclassified source but a source
16 that's not even in America. That's not a
17 whistleblower, that's somebody who, in my
18 opinion, has no allegiance to this country
19 and in my opinion has no desire for, for
20 our country's well-being. Has a desire for
21 the outside sources to possibly do damage

1 to our country.") - END OF VIDEO -

2 BY MR. COOMBS:

3 Q So you're saying now on the stand that you
4 are not referring to PFC Manning when you say that?

5 A The question that I was asked, I don't
6 remember verbatim, was they asked me to give them an
7 example of what, under what these circumstances of this
8 case, because at that time Manning was just allegedly
9 asking me what my opinion as far as this topic, what
10 would be considering a whistleblower. I was not
11 identifying Manning in that statement.

12 Q All right. So my question, and you just
13 answer it, when you're saying actions show that he has
14 no allegiance to this country, actions show has no
15 desire for our country's well-being, has a desire to do
16 damage to our country, you're saying right now on the
17 stand that when you said that you're not referring to
18 PFC Manning?

19 A I'm referring to anyone that would do
20 something like that, yes. I did not know whether PFC
21 Manning had done anything like that at that time.

1 Q All right. So are you referring to PFC
2 Manning or not?

3 A No.

4 Q That's what you want us to believe?

5 A Yes.

6 MR. COOMBS: No further questions.

7 THE COURT: Redirect?

8 MS. OVERGAARD: Yes, ma'am.

9 MR. COOMBS: Retrieving from the witness
10 Defense Romeo Romeo for identification.

11 MS. OVERGAARD: May I have a moment?

12 THE COURT: Yes.

13 (Pause.)

14 REDIRECT EXAMINATION BY MS. OVERGAARD:

15 Q I'm just going to go over a couple of
16 things that defense brought up just to let you clarify
17 anything.

18 So was there, there was an EEO complaint
19 while you were deployed?

20 A Yes.

21 Q And it was because you had said that you

1 had said something was fagotty?

2 A Yes.

3 Q Was there other EEO complaints while you
4 were deployed?

5 A Yes.

6 Q Was there any consequences to that
7 particular EEO complaint?

8 A No.

9 Q So what happened?

10 A I was pulled into the EEO office and the
11 EEO officer informed me of the allegations brought
12 against me and I explained the situation to him.

13 What I actually, what had happened when I
14 actually said I admitted to saying it and he informed
15 me that I would need to, you know, be careful what I
16 say because it could offend other people and that if
17 something was brought to his attention again then he
18 would have to pull me back into the office.

19 Q Did you ever hear PFC Manning use the word
20 fagotty?

21 A Yes.

1 Q When was that?

2 A That was following the EEO complaint.

3 Q Were there other gay soldiers in your unit?

4 A Yes.

5 Q Did you have any issues with them?

6 A No.

7 Q Did you have any other gay soldier friends
8 in the unit?

9 A Yes.

10 Q And was that, was your perceived sexual,
11 was your perception, or was your perception of PFC
12 Manning's sexual orientation, did that have anything to
13 do with why you counseled him?

14 A No.

15 Q In fact, there was a time that you learned
16 information about his sexual orientation?

17 A Yes.

18 Q And when was that?

19 A That was, I believe it was around the May
20 of 2009 timeframe. He had gone to analyst training in
21 Washington, D.C.

1 Q And what did you learn?

2 A I learned --

3 MR. COOMBS: Objection, Your Honor.

4 Relevance. At this point the information about my
5 client's sexual orientation --

6 MS. OVERGAARD: They brought it up to show
7 bias, so I'm laying this foundation so she can show
8 what she did that indicates that she didn't have bias.

9 MR. COOMBS: I brought up the EEO complaint
10 to show bias, not her prejudice, if she has any,
11 towards gays.

12 THE COURT: The word is "fagotty."

13 Overruled. I'll allow it.

14 A Can you repeat your question, ma'am?

15 Q Sure.

16 What did you, when did you learn or when
17 did you receive some information about PFC Manning's
18 sexual orientation?

19 A He was away on TDY and I received a phone
20 call from PFC Manning indicating that an NCO had
21 accused him of some homosexual acts outside of a hotel

1 that the individuals attending TDY were staying at.

2 Q Without going into details, what happened
3 as a response to that information?

4 A My response was to after I got -- my first
5 statement was to get everything that Manning wanted to
6 tell me about the situation. I informed him that no
7 matter what the outcome, when he came back, we would
8 try to assist him in the issue and that we obviously
9 weren't going to take the NCO's word on the situation.

10 And I did remind him that regardless of,
11 regardless of who he is, what he does or what he likes
12 to do in his personal time that she should be just a
13 little bit more cautious on where he does things due to
14 the fact we do have a Don't Ask, Don't Tell.

15 I asked him not to tell us, but otherwise
16 we would handle the situation when he got back.

17 Q You say you assisted. How did you assist
18 him?

19 A I partnered up with Sergeant Adkins and we
20 kind of got the NCO's side of the story and told him
21 that there were no grounds for his accusation and we

1 weren't going to, we weren't going to entertain it.

2 Q Did anyone recommend separation?

3 A That NCO did.

4 Q How did you respond?

5 A I responded to the fact that he, we pretty
6 much told him that we weren't going to pursue
7 separation at all for that issue.

8 Q And then just to explain. In that video --
9 well, can you tell us about -- what did you talk about
10 in the interview that you did for that video that
11 Mr. Coombs showed?

12 A We talked about a lot of things. We talked
13 about kind of personal things about myself. Where I
14 come from. My experience within the unit. Different
15 aspects on unit function and things like that.

16 He asked me some questions about, you know,
17 if I ever had, you know, personal conversations with
18 Manning and things like that and just my opinion on
19 different controversial topics like whistleblower or
20 situations like Abu Ghraib or things like that. It was
21 a very broad spectrum two-hour questioning.

1 Q Did you discuss this, no allegiance
2 statement that you testified today?

3 A No, I did not.

4 Q Did you discuss -- well, did you discuss
5 any other details related to the case or did you --
6 what type of information did you talk about the case?

7 A We talked, I did talk about when he struck
8 me. But the majority, the majority of the questions
9 were kind of my personal opinion of situations. I was
10 very, very careful to shut down any possible questions
11 that could have pertained to the case especially when
12 the case was in closed session. And they knew not to
13 touch anything that wasn't public record.

14 But primarily it was really my personal
15 views on different situations and kind of what I
16 thought of Manning just as a soldier and things like
17 that.

18 Q Mr. Coombs talked to you about some of --
19 he brought up to you that PFC Manning had a lot of --
20 he was interested in politics and things like that?

21 A Yes.

1 Q What are some of his political views that
2 you talked about?

3 A Politically --

4 THE COURT: What is the relevance of that?

5 MS. OVERGAARD: Well, actually, I'll
6 withdraw the question, ma'am.

7 BY MS. OVERGAARD:

8 Q In regard to, was there any other
9 information that you considered when you stated that
10 you thought PFC Manning was a possible spy, besides
11 what Mr. Coombs elicited from you?

12 A Was there any other information that would
13 elicit?

14 Q Was there any other information that you,
15 that went into your -- you said it was kind of a gut
16 feeling, a personal, I guess a personal opinion that
17 went into that decision?

18 A There were some things that he definitely,
19 definitely did around the office that definitely walked
20 the line of personal security issues if not crossed
21 them. So it just kind of further solidified --

1 MR. COOMBS: Your Honor, I'd like to have
2 this as a timeframe.

3 Is the witness representing that this
4 occurred prior to when she said he was a spy? If so,
5 it would be a fact that she didn't testify on direct.
6 But I want to make sure that this is stuff prior to the
7 time that she made the allegation.

8 THE COURT: Captain Overgaard, why don't
9 you go ahead and capture that.

10 BY MS. OVERGAARD:

11 Q Yes. Let's limit your response to any
12 information that you had before you actually made the
13 statement to Sergeant Adkins that you thought he was a
14 possible spy. So anything that you actually considered
15 when you made that statement to Sergeant Adkins.

16 A It was really just -- at that point just
17 his emotional responses and the things that I had
18 already testified about that really just did not sit
19 well, sit well with me as someone that, you know, could
20 definitely be holding a security clearance.

21 So I don't, I'm not comfortable enough

1 about my timeline memory to be able to give you
2 specific circumstances but I do know that I was very
3 confident in my feelings on the subject.

4 Q So just a minute ago when you mentioned
5 closed session, what did you mean by that?

6 A In the Article 32 hearing, I did a
7 telephonic testimony and I was told that that portion
8 of the questioning was in closed session and I'm
9 assuming that meant that only pertinent individuals
10 needed to be present and the topic of allegiance was
11 covered within that section.

12 Q In your cross you mentioned that you had
13 found a camera that PFC Manning left?

14 A Yes.

15 Q What did you do in response to that?

16 A In response I investigated it. At that
17 point I was appointed by Lieutenant Fields to assist
18 her in being the security manager of the SCIF.

19 At that point I found the camera and went
20 through the contents to ensure that there was no
21 classified information on it and then informed Chief

1 Ehresman and Lieutenant Fields that I had found the
2 camera and allowed them to investigate the pictures as
3 well, just to act as witnesses.

4 Q One moment, please.

5 And the -- you mentioned a Tweet as well in
6 your cross?

7 A Yes. I don't remember the exact timeframe.
8 I believe it was August or September of last year --

9 THE COURT: When you say last year you
10 mean --

11 THE WITNESS: I apologize, 2012.

12 A I had, myself and my family had been
13 receiving threats from followers and in the response
14 out of just a last minute judgment call I tweeted that
15 and immediately removed it from the web because I felt
16 as though it was probably not appropriate. But
17 somebody had taken a screenshot of it.

18 But I was acting out of fear for myself and
19 my family.

20 MS. OVERGAARD: Thank you.

21 RECROSS EXAMINATION BY MR. COOMBS:

1 Q I'm showing the witness what has been
2 marked Defense Exhibit VV for identification.

3 Ms. Showman if you would look at that. Do
4 you recognize that?

5 A Yes.

6 Q Is that the tweet that you sent out?

7 A Yes.

8 Q So this is a tweet apparently that you sent
9 out, do you see the date on it?

10 A I do.

11 Q That's what?

12 A 12 September 2012.

13 Q So you say you sent this out in response to
14 threats from followers?

15 A Yes.

16 Q And then that's what you sent out in
17 response to those threats?

18 A Yes.

19 Q You agree with me that that's basically, if
20 that were true, that that tweet wouldn't exactly
21 convince people not to continue to threaten you?

1 A Um, I would seeing it and that's why I
2 initially pulled it off because I had the understanding
3 that if people knew the truth they wouldn't be so
4 blatant about going after myself or my family.

5 Or even --

6 Q I'm sorry, go ahead.

7 A Or even, you know, following I guess
8 Manning in this manner.

9 So I was actually, I immediately removed it
10 because I definitely spoke out of true emotion so it --
11 yes, but these are my words.

12 Q So you would agree with me that referring
13 to those people if they knew the truth as ignorant
14 people or ignorant followers, that's obviously not a
15 good thing to do if people are threatening you?

16 A I do understand that and I agree with you.

17 MR. COOMBS: Retrieving from the witness
18 Exhibit VV for identification.

19 Offering into evidence Exhibit VV.

20 THE COURT: Any objection?

21 MS. OVERGAARD: No, ma'am, no objection.

1 THE COURT: Defense Exhibit VV is admitted.

2 BY MR. COOMBS:

3 Q You said for the camera incident where you
4 found a camera in the SCIF, you investigated it?

5 A Yes.

6 Q I take it you investigated it because
7 having a camera in a SCIF is a security violation?

8 A Yes.

9 Q And it's a security violation because
10 people may be taking pictures of classified
11 information?

12 A Correct.

13 Q So you felt it your duty at that point to
14 investigating that to ensure there was no classified
15 information on the camera?

16 A Yes.

17 Q And you verified that there was none?

18 A Correct.

19 Q And at that point then because you
20 investigated it, you then reported that to, I think you
21 said Ehresman?

1 A Chief Ehresman and Lieutenant Fields.

2 Q And Lieutenant Fields?

3 A Yes.

4 Q And all that because of your duty of
5 protecting classified information?

6 A Correct.

7 Q And you see how then if you thought PFC
8 Manning actually said anti-American comments, disloyal
9 comments, that you would have a similar duty to protect
10 classified information?

11 A I agree, yes.

12 Q And you see how that might have been
13 resulting in you doing something more than going to
14 Sergeant Adkins?

15 A I took it to the highest ranking individual
16 in my office, yes.

17 Q You could have taken it to, you know, the
18 S2, Major Clawson at the time?

19 A He's not in my chain of command, sir.

20 Q Did you have an officer in your chain of
21 command?

1 A I was enlisted so therefore my chain of
2 command were enlisted soldiers.

3 Q Did you have an officer that supervised
4 you?

5 A No.

6 Q You had no officer that was in your chain?

7 A No.

8 Q None whatsoever?

9 A No.

10 Q Okay. So when you're referring to chain, I
11 take it you're referring to people who might rate you?

12 A Correct. In a way of, I guess, explaining
13 that for people to understand. Officers had their own
14 kind of area. The NCOs were to take care of the
15 soldiers. And the head NCO would report to the, the
16 NCOIC, the noncommissioned officer in charge, therefore
17 reported to the OIC, the officer in charge.

18 Q Now, who was that officer in charge?

19 THE COURT: When?

20 Q At the time of this statement that's been
21 allegedly --

1 A I truthfully do not remember his name. He,
2 I do know that he was the S2 that initially deployed
3 with us and therefore was removed as an S2 partially
4 through deployment. I don't recall his name, though.

5 Q Does Command Major Clawson --

6 A Yes.

7 Q So Major Clawson could have been the OIC
8 that you went to to report a security issue?

9 A That Sergeant Adkins would have gone to.

10 Q I'm saying for you, Clawson could have been
11 somebody you reported to?

12 A If I wanted to step out of the line of
13 chain of command, yes, he would have been somebody that
14 I could have been gone to.

15 Q Then you said that there was an incident in
16 which an NCO made an allegation against PFC Manning?

17 A Yes.

18 Q And then you apparently got some
19 information from PFC Manning on that?

20 A Yes.

21 Q And you were basically telling him that you

1 were not going to take the word of an NCO?

2 A Correct.

3 Q And that determination was based upon what?

4 A That I believed Manning side of the story.

5 And even if, even if the NCO was true, I don't see how
6 it took away from our mission whether Manning did those
7 things or not. Did it affect the mission in the long
8 run? And myself and Sergeant Adkins decided that it
9 did not so therefore, you know.

10 Q All right. An NCO makes an allegation.
11 PFC Manning gives you some information. You choose to
12 believe PFC Manning.

13 A Yes.

14 Q And then at that point you and I guess, you
15 said Sergeant Adkins --

16 A Correct.

17 Q -- make the determination that you're not
18 going to entertain the allegation made by the NCO?

19 A Correct. Well, we weren't going to
20 entertain his desired outcome.

21 Q And that desired outcome was separation?

1 A Correct.

2 Q And at least at that point you might not
3 have known because of your rank, but did you understand
4 the policy of Don't Ask, Don't Tell?

5 A Yes.

6 Q Did you understand the duty of when there
7 is an allegation of conduct what the unit had to do?

8 A Correct.

9 Q And did you guys investigate?

10 A I did not personally. I don't know if
11 Sergeant Adkins, without informing me, if he did
12 anything further. But to my knowledge, apart from
13 speaking with that noncommissioned officer that
14 apparently witnessed him, that's all, that's all that I
15 know of.

16 Q And as far as being an intelligence
17 analyst, are you aware or not of a concern from a
18 security standpoint if somebody is gay in the military?

19 A I'm not aware of homosexuals being a
20 security risk.

21 Q So you're not aware through your training

1 at all of somebody having a lifestyle or whatnot that
2 could subject them to being blackmailed in order to
3 keep that secret and therefore they might become a
4 security risk?

5 A Not to my knowledge.

6 Q No one has ever trained you on that?

7 A No, not to my knowledge.

8 Q So that wouldn't be one of the things that
9 you're looking for, somebody who might have a secret
10 that they want to keep and could be subject to
11 blackmail and then forced to give information to hide
12 that secret?

13 A Not, not under the context of
14 homosexuality. But that's also not a determination for
15 someone of my rank to make.

16 Q Okay. So when you're thinking about all
17 the, the things in your mind that might get you to
18 believe he's a potential spy, his emotional reactions,
19 his problems with you, any sort of potential blackmail
20 against him to hide a secret wouldn't be one of the
21 factors that you thought of?

1 A I honestly never thought that someone would
2 blackmail him for his sexuality.

3 Q Okay. And you indicated that you only had
4 NCOs in your chain?

5 A Correct.

6 Q First Sergeant was one of those people I
7 guess?

8 A Beyond Sergeant Adkins.

9 Q Did you ever go to the First Sergeant to
10 talk about the alleged allegation against my client?

11 A No.

12 Q Why not?

13 A I felt it was inappropriate.

14 Q Why?

15 A Because I had gone to my appropriate chain
16 of command and they informed me they would handle it
17 and that's all I'm obligated to you.

18 Q That's all your obligated to do?

19 A That's what I felt was appropriate to do,
20 yes.

21 MR. COOMBS: No further questions.

1 THE COURT: Any final redirect?

2 REDIRECT EXAMINATION BY MS. OVERGAARD:

3 Q Could you tell us why you reported the
4 camera incident to Lieutenant Fields and Chief
5 Ehresman?

6 A Cameras in the SCIF --

7 Q I mean --

8 A Lieutenant Fields was the security manager
9 and Chief Ehresman was the OIC, so Chief Ehresman was
10 in charge of the fusion cell which that's where we
11 worked and Lieutenant Fields was the security manager
12 at the time.

13 MS. OVERGAARD: All right. Thank you.

14 MR. COOMBS: One follow-up.

15 RECROSS EXAMINATION BY MR. COOMBS:

16 Q Did you have a security manager when you
17 were in Garrison?

18 A Yes.

19 Q Who was that?

20 A For the majority of the time I believe it
21 was Chief Balonek, at that time Staff Sergeant Balonek.

1 Q So you recognized a security issue of PFC
2 Manning of having no loyalty to the flag or the
3 country. Did you go report that to that security
4 manager?

5 A From my memory on the timeline, I do not
6 believe he was at Ft. Drum at that time. I believe
7 that Lieutenant Fields was coming into the shop and was
8 beginning to take over as a security manager at that
9 time.

10 Q All right.

11 A Because they had a hand off.

12 Q Did you report it to Lieutenant Fields?

13 A No, that would have been inappropriate for
14 me to go to my officer in my office without discussing
15 it with my NCOs.

16 Q Okay. So then I take it from that then for
17 the camera incident before you went to Lieutenant
18 Fields you must have discussed it with your NCO?

19 A At that time I did not have an NCO chain of
20 command. The OIS I worked directly for Chief Hack,
21 there was an NCOIC over the shop, that was Sergeant

1 Adkins and he was not in the fusion cell at that time.
2 So I went to the security manager because there was an
3 actual, an active security risk in the SCIF, which was
4 a camera.

5 Q So whether or not you report it to the
6 secure manager in your mind is whether or not it's
7 appropriate or not?

8 A I took it to the appropriate chain of
9 command so I did the appropriate thing.

10 Q Okay.

11 THE COURT: Any redirect?

12 MS. OVERGAARD: No, ma'am.

13 THE COURT: Temporary or permanent?

14 MS. OVERGAARD: Temporary.

15 THE COURT: Ms. Showman, you're temporarily
16 excused. Please don't discuss your knowledge of the
17 case with anyone other than counsel or the accused
18 while the trial is going on.

19 THE WITNESS: Yes, ma'am.

20 MR. FEIN: Can we have a moment, Your
21 Honor?

1 THE COURT: Yes.

2 (Pause.)

3 MR. FEIN: Sorry, Your Honor.

4 THE COURT: I'm sorry.

5 MR. FEIN: Thank you, Your Honor.

6 Looking at the time, United States
7 recommends, other than I can answer the court's
8 question from before, but after that that we go on
9 lunch recess and come back and continue.

10 THE COURT: Does the Government have
11 further rebuttal?

12 MR. FEIN: The United States would like to
13 discuss that over lunch during the recess. We don't
14 need an extended recess. Otherwise it was not planned
15 but based off that testimony there might be.

16 THE COURT: Okay. Why don't you answer my
17 question first on the 641.

18 MR. FEIN: Yes, ma'am.

19 Your Honor, looking at the evidence the
20 bottom line is the United States does agree that the
21 CIDNE database, the entire CIDNE database did contain

1 other types of records.

2 Prosecution Exhibit 116 which is the
3 stipulation of expected testimony of Mr. Patrick
4 Holifeld, paragraph 8. Mr. Holifeld testified it is a
5 structured collection of data with over 100 different
6 types of reports including SIGACTS.

7 Then there was other testimony that SIGACTS
8 took up about 24 percent of the actual CIDNE database.

9 THE COURT: 24 percent?

10 MR. FEIN: Yes, ma'am. Mr. Morris'
11 testimony was the 24 percent.

12 THE COURT: All right. That being the
13 case, what is the government's position with respect to
14 the defense RCM917 motions? Does that alter it in any
15 way?

16 MR. FEIN: Your Honor, the United States
17 would say it doesn't affect for 917 purposes because
18 any evidence of a subportion is evidence of a greater
19 of the database.

20 However, with that being said, it is clear
21 that the Government did not present evidence that the

1 entire CIDNE database was compromised, it's only
2 approximately 24 percent, at that time.

3 THE COURT: So what is the government's
4 position with respect to what the court should do in
5 the 917 motion?

6 MR. FEIN: Yes, ma'am. The United States
7 would argue that 917 motion should be denied.

8 THE COURT: And the specifications should
9 remain as is?

10 MR. FEIN: Yes, ma'am, for 917 purposes.

11 THE COURT: Well, if he presented no
12 evidence that the entire database was stolen, that's
13 what you're alleging in Specifications 5 and 7, I mean
14 4 and 6, excuse me. I believe it was specifications
15 that were issued.

16 MR. FEIN: Yes, ma'am. Ma'am, the
17 Government through its briefs have provided evidence
18 that a sub, proving the subportion is evidence of a
19 greater portion, but, again, maybe it's easier, Your
20 Honor, for 917, the United States would then recommend
21 the court would find by exceptions and substitutions

1 for 917 purposes because that is what the Government
2 will argue eventually anyways.

3 THE COURT: And find by exceptions and
4 substitutions what?

5 MR. FEIN: Yes, Your Honor. There are
6 multiple manners where the trier of fact can find that
7 specifically now you, in your hat as the court.

8 First Your Honor, looking at Specification
9 4 as the example, the United States has in
10 Specification 4 a record of thing of value, the United
11 States or department or agency there wit.

12 It currently states, the Combined
13 Information Data Network Exchange in Iraq containing
14 more than 380,000 records. An exception and
15 substitution would be a portion of the Combined
16 Information Data Network Exchange containing 380,000
17 records because that would be a sub of the whole or
18 part of the whole.

19 Therefore there's adequate notice that the
20 entire database was stolen and a sub or a portion of it
21 falls within that as a minor variance.

1 THE COURT: Assume I did that for
2 evaluation purposes. What's the government's position?

3 MR. FEIN: Your Honor, the government's
4 position for valuation purposes is that the United
5 States would then be arguing for 917 purposes is argue
6 now that the, when it comes to -- well, there's two
7 ways, of course, the Government is offering evidence to
8 prove valuation, either through the development of
9 maintenance costs and then also the valuation of the
10 information contained within.

11 So for the development of maintenance costs
12 it would be a pro rata share. The testimony we have
13 had is that approximately 24 percent of the CIDNE
14 database contained the SIGACTS and so that would be
15 what the United States would be arguing is that
16 24 percent of the total of the maintenance and
17 development costs to maintain the information in
18 exclusive possession of the Government would go to
19 that.

20 For the cost to a foreign intelligence
21 service, based off the testimony of Mr. Lewis, it was

1 based off the actual information he looked at.

2 So that would not necessarily change the
3 specification because he reviewed a few documents, the
4 charge documents, and that was definitely less than
5 380,000 or the, for Specification 6, the 90,000
6 records.

7 THE COURT: Finally with the development
8 and maintenance costs that the Government is relying
9 upon, is there any case that you're aware of that has
10 allowed that as a method of evaluation for electronic
11 data?

12 MR. FEIN: Not necessarily for the
13 development costs, ma'am, but the operation costs to
14 protect the information, yes.

15 THE COURT: Okay. What would that be?

16 MR. FEIN: That is in (inaudible) v. May,
17 ma'am?

18 THE COURT: All right, May is the airline
19 case, right?

20 MR. FEIN: Yes, ma'am.

21 THE COURT: So that didn't involve

1 electronic data. That involved something else, right?

2 MR. FEIN: Yes, ma'am. It involved other
3 information (inaudible) the database case.

4 THE COURT: What did that rely on for
5 valuation?

6 MR. FEIN: One of the major factors was
7 personnel costs, Your Honor, and that is the evidence
8 that the Government has presented for all of 641
9 defenses, the costs for personnel, personnel time.

10 Of course, it will be argument, it would be
11 prorated out, but the court takes judicial notice of
12 different GS salaries and soldiers' salary.

13 THE COURT: Okay. Thank you.

14 Defense, in light of the 24 percent
15 information what -- I understand your general argument
16 but does that change your position in any way?

17 MR. COOMBS: Yes, because I think at this
18 point what the Government is trying to do is avoid
19 asking for a variance in their 603 and having you skip
20 past the 917 motion. I think they have to ask at this
21 point to do a variance to the charge sheet.

1 THE COURT: A change to the charge sheet?

2 MR. COOMBS: Excuse me, yes. A change to
3 the charge sheet and our opinion a change they propose
4 the portion of would be a major amendment. It would
5 change the identity of the charged item.

6 THE COURT: That's based on your view it's
7 a ceiling of a database without records.

8 MR. COOMBS: Right. So that would be our
9 position. At first they would have to articulate that
10 they're asking this court to make an amendment to the
11 charge sheet.

12 THE COURT: So is it the defense's position
13 that should I find that -- well, it would be
14 appropriate for the court to find that it's a lesser
15 included offense.

16 MR. COOMBS: Yes.

17 THE COURT: Because of the stuff in the
18 database?

19 MR. COOMBS: Yes, Your Honor.

20 THE COURT: Government, you've heard the
21 defense's position. Does the Government want to

1 propose a change?

2 MR. FEIN: Yes, ma'am. United States would
3 propose a change. That is a minor change after
4 arraignment under 603C.

5 The accused was on notice of the greater,
6 the greater of the whole entire database, this is just
7 a portion or part of the database.

8 THE COURT: That would be for
9 Specifications 4 and 6?

10 MR. FEIN: Your Honor, that would be for
11 Specifications 4 and 6.

12 THE COURT: Of Charge 2.

13 MR. FEIN: Of Charge 2. May I have a
14 moment, Your Honor?

15 THE COURT: Yes.

16 (Pause.)

17 MR. FEIN: Also for Specification 16, Your
18 Honor, of the GAL.

19 THE COURT: All right. What are the minor
20 changes do you propose, the allegedly minor changes
21 that you propose for those three specifications?

1 MR. FEIN: Ma'am, it's the same minor
2 change the United States offers for all of it. So, "to
3 wit, a portion of" for Specification 4, 6 and 16 of
4 Charge 2.

5 THE COURT: "A portion of." Let me see the
6 specifications.

7 So it would be after "to wit, a portion of
8 the Combined Information Data Network Exchange Iraq
9 database."

10 MR. FEIN: Yes, ma'am.

11 THE COURT: All right. And --

12 MR. FEIN: Then the same for Specification
13 6, to wit, a portion of the Combined Information Data
14 Network Exchange Afghanistan.

15 THE COURT: Well, for Specification 16 of
16 Charge 2, then what's the government's position on what
17 the evidence has shown?

18 MR. FEIN: Yes, ma'am. Chief Nixon
19 testified about first how the Global Address Lists are
20 populated and what it means to have the Global Address
21 List at that time in Iraq. He was at the headquarters

1 and he testified that although there were approximately
2 160,000 users in the active directory, a populated GAL
3 information was populated from the brigade's height.
4 As they put their information onto their GAL it
5 continued, populated up and out.

6 So what that testimony shows, Your Honor,
7 is that he, when he testified at or excuse me,
8 Specifications 4, Williamson testified through expected
9 testimony that he recovered approximately 76,000
10 different e-mail and other e-mail addresses with names
11 and office and other identifying information in total
12 from Private First Class Manning or, excuse me, from
13 Sergeant Bigelow's work computer.

14 Then, extracts of that were found by
15 Mr. Johnson on Private First Class Manning's personal
16 Macintosh computer.

17 Based off that and Chief Nixon's review of,
18 I can find the PE number as well, the extracts.

19 Based off Chief Nixon's review of
20 Prosecution Exhibit 47 and 48, which are both the CDs
21 containing the files of all the names and e-mail and

1 the two different files and then specifically in court
2 he referenced, he testified about 147 Alpha and 147
3 Bravo, 148 Alpha, 148 bravo.

4 Each of those 147s and the 148s were
5 extracts from those original evidence and he testified
6 I think the first 10 pages how that is the information
7 from the master Global Address List for the USFI Global
8 Address List.

9 THE COURT: Who testified as to this,
10 Nixon?

11 MR. FEIN: Chief Officer Ford Nixon, Your
12 Honor. And his testimony explained how the lowest
13 level, the Global Address List is created and the
14 brigade level and the brigade feeds to division and the
15 division to headquarters.

16 THE COURT: Is the Government to proposed
17 change of Specification 16, are you charging only the
18 76,000?

19 MR. FEIN: Yes, ma'am. That's all that was
20 actually found.

21 THE COURT: All right. Maybe I'm confused.

1 I thought the Government theory earlier was there may
2 be deletion and there was more.

3 MR. FEIN: Yes, ma'am. The confusion there
4 is we're talking about two different computer systems
5 to show how transferred occurred off the U.S.
6 Government computers.

7 THE COURT: Let's make this easy. How many
8 addresses are you alleging was stolen --

9 MR. FEIN: 766,000, and I'll give you the
10 PE.

11 Ma'am, Prosecution Exhibit 143.

12 THE COURT: Is what?

13 MR. FEIN: The stipulation of expected
14 testimony of Special Agent Williamson from CCIU and in
15 his stipulation of expected testimony he explains
16 exactly how many e-mails the two large text, files law
17 dot TXT, were recovered from that computer and I
18 apologize, Your Honor, I should have read this first.
19 74,000 is the exact testimony on this stipulation of
20 expected testimony. 74,000 exchange formatted e-mail
21 addresses and then their associated names in a separate

1 file.

2 THE COURT: So what is the proposed change
3 that the Government wants to make to Specification 16
4 of Charge 2?

5 MR. FEIN: Yes, ma'am. The United States
6 proposes, Your Honor, that the minor change would be,
7 after to wit a portion of, and then the United States
8 forces Iraq Microsoft Outlook SharePoint exchange
9 global server address list --

10 THE COURT: Hold on.

11 MR. FEIN: Yes, ma'am.

12 THE COURT: All right, to wit a portion of.
13 Anything else?

14 MR. FEIN: No, ma'am, just a portion of
15 statements 4 and 6, Specifications 4 and 6.

16 THE COURT: Defense, I assume your
17 objection is the same as for the others?

18 MR. COOMBS: Additional matters, ma'am.

19 So we would object now that they're asking
20 for an amendment, that it is a major amendment and
21 looking at 603, it indicates that a major amendment is

1 essentially adding as a (inaudible) anything as a
2 party, offense.

3 And then what's important is it has then
4 two "or's." Or, a substantial matter not fairly
5 included in the previous preferred charge.

6 And then another "or." Or, which are
7 likely to mislead the accused as the offenses charged.

8 So if it fits in any of those three it's a
9 major amendment.

10 Our position is that it clearly fits in the
11 last one, which is a matter which is likely to mislead
12 the accused on offenses charged.

13 We did not get an opportunity to examine
14 any of the witnesses on the pro rata theory that the
15 Government now is asking the court to use for
16 valuation.

17 All the evidence introduced from all the
18 witnesses was on the evaluation of the whole database.

19 Importantly, no court has allowed a pro
20 rata basis for evaluation and the case the court should
21 look to is the Wilson court. Because in the Wilson

1 court you had 100 rifles and the idea was use a pro
2 rata value of a dollar thirty-nine in order to get to
3 the 100-dollar threshold and the court said there that
4 is not, that's purely speculative.

5 THE COURT: Wilson offered no evidence of
6 valuation at all?

7 MR. COOMBS: No, that's correct. They
8 relied essentially on trying to say we'll just look at
9 what it is and you just, in order to get over the
10 100-dollar threshold it's just 1 dollar thirty-nine.

11 It's actually less than 100 rifles. It
12 might have been 70.

13 But the position would be that would be a
14 case that would support the idea that any sort of pro
15 rata portion in order to come to evaluation is an
16 inappropriate manner in order to conclude what a
17 particular item is worth. You need somebody to testify
18 what the item is worth.

19 Additionally, we have testimony certainly
20 with regards to CIDNE but I think this would apply to
21 the GAL as well. You have a database that has

1 unlimited capability. It's constantly being added to.
2 It's constantly growing, changing, evolving.

3 There is no testimony to indicate that
4 there was a capacity level for this.

5 So to, to do a snapshot in time of how much
6 it cost to create the database or maintain the database
7 is purely speculative with relation to then, if you're
8 going to use a pro rata, to then say okay, let's use
9 24 percent.

10 Well, at what point in time are you going
11 to make that calculation? When they first created the
12 database? Right when he took the items? Because we
13 had no evidence as to the value of the database at the
14 time that he took the items or at some later point.

15 So there really is no ability to do the
16 so-called pro rata portion.

17 The defense's position on Chief Nixon, he
18 testified if this was anything it was the division GAL
19 or what he thought or a portion thereof. The court can
20 go back to the record in determining this motion as to
21 what Chief Nixon testified to.

1 So our first position would be that this
2 would be a major amendment.

3 THE COURT: Let me ask you a question:
4 What should the court find that the charge is, except
5 for the stuff in the database as well as the records?
6 What's the defense's position?

7 MR. COOMBS: Well, again the --

8 THE COURT: It's a subset of the records
9 basically.

10 MR. COOMBS: Okay. So if the court does
11 that, I think you still have all the problems we
12 addressed yesterday with valuation and --

13 THE COURT: I understand that.

14 MR. COOMBS: -- and whatnot, then we would
15 fall back in RCM915, Your Honor.

16 We would say, we would request in a RCM915
17 that the court declare a mistrial with regards to these
18 specifications.

19 THE COURT: Why?

20 MR. COOMBS: Under RCM915 a mistrial would
21 be appropriate granted that it is a remedy that should

1 be used with great caution, but it is appropriate when
2 substantial doubt upon the fairness of the proceedings
3 has resulted, and mistrial as the rule says be declared
4 as some or all of the charges.

5 In this instance here, what we have is we
6 have a Government who has charged something, clearly
7 has in their bill of particulars, has alleged, again,
8 what it is, the database, has maintained that in the
9 way they've proven the case, has then done 31 pages of
10 inconsistent FS motions on their theory or how they're
11 proving something and then now at a very late date, you
12 know what, let's make some changes because yeah, we
13 didn't charge it right.

14 And we now are looking back at all the
15 evidence to try to piece together, piecemeal together
16 a, one, what did you charge, two, did you prove the
17 value and if pro rata was their way of trying to prove
18 this charge we didn't have an opportunity to
19 cross-examine on that at all.

20 So at this point the mess that's been
21 created is because of the individuals sitting at the

1 trial counsel table. And my client shouldn't pay for
2 that.

3 Instead, if this court doesn't grant the
4 917 motion, this court should grant now our request
5 RCM915 to declare a mistrial with regards to these
6 specifications, the 641 specifications.

7 THE COURT: Well, the court will take all
8 of these issues under advisement when doing the omnibus
9 ruling on the variety of issues that have been raised
10 with respect to the 641 specifications.

11 MR. FEIN: May I make a factual
12 clarification?

13 THE COURT: Yes.

14 MR. FEIN: The defense alleged that they
15 did not have an opportunity to question witnesses about
16 the pro rata share.

17 Actually every witness that essentially
18 took the stand starting with Chief Nixon, the questions
19 were directly at how much of the energy goes into the
20 system that is directly to the GAL to the rest of the
21 active directory functions, that line of questioning

1 was actually elicited and that is the same for all the
2 other individuals as well, how much went into actual
3 CIDNE or SIGACTS versus other aspects of CIDNE.

4 THE COURT: The court will examine the
5 evidence.

6 I believe before, the Government, you asked
7 for a recess or lunch break?

8 MR. FEIN: Yes, ma'am. The standard lunch
9 break and we can make a final decision about the
10 closing rebuttal case.

11 THE COURT: 1330?

12 MR. FEIN: Yes, ma'am.

13 MR. COOMBS: Yes, ma'am.

14 THE COURT: Court is recess until 1330.

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